LIBRARY

Office-Supreme Court, U.S.
FILED
MAY 12 1967
JOHN F. DAVIS, CLERK

NO. 1101

In the
Supreme Court of the United States
OCTOBER TERM, 1966.

GORDON L. EVANSON AND MELBA P. EVANSON
PAUL DAN ROSSO AND PAULINA M. ROSSO,
PETITIONERS,

VS.

NORTHWEST HOLDING COMPANY,
A MINNESOTA CORPORATION,
RESPONDENT.

PETITION FOR REHEARING OF DENIAL OF PETITION FOR WRIT OF CERTIORARI

PAUL DAN ROSSO
MELBA P. EVANSON
7 Ortman Street Southeast
Minneapolis, Minnesota 55414

In Their Own Behalf
PETITIONERS

I N D E X

		Page
PREFACE	TO THE UNITED STATES SUPREME COURT	1
I.	PETITION FILED - NO RESPONSE OR OBJECTION. . . .	1
II.	PETITION DENIED.	3
III.	VOID PROCEEDINGS	3
IV.	LEDWEIN v. ROSSO	5
V.	HOLMES v. ROSSO	5
VI.	LEDWEIN v. PAUL ROSSO; DAN ROSSO; PAULINE ROSSO; AND WILLIAM HOLMES . .	6
VII.	WILLIAM HOLMES v. PAUL ROSSO .	7
VIII.	IN THE MATTER OF THE APPLICATION OF WILLIAM HOLMES TO REGISTER THE TITLE TO CERTAIN LAND	7
IX.	DECREE IN REGISTRATION . .	17
X.	N.W. HOLDING CO. v. EVANSONS N.W. HOLDING CO. v. ROSSOS .	23
XI.	CONCLUSION	26
XII.	PROCEDURAL HISTORY . . . Also see Page 23.	28
XIII.	TRANSCRIPT OF PROCEEDINGS . . 26 SEPTEMBER 1961.	39
XIV.	DECISION & ORDER - 26 SEPT. 1961	55
XV.	WRIT OF RESTITUTION . . .	56

XVI. ORDER, 4-63 Civ. 457
U.S. Dis. Ct. of Minn.
DATED 20 DECEMBER 1965 . . . 58

XVII. NOTICE OF LIS PENDENS ON TORRENS
CERTIFICATE NO. 346701
FILED APRIL 14, 1967, Henn. Cty.
Reg. of TITLES. 59

XVIII. NOTICE OF LIS PENDENS ON TORRENS
CERTIFICATE NO. 346701 . . 62

XIX. STATUTES. 65

XX. CASES. 66

XXI. CERTIFICATE OF PETITIONERS. . . 75

MINNESOTA STATUTES AND DIGESTS — Page

510. HOMESTEAD EXEMPTIONS — 10
557.08 FORCIBLE EVICTION; TREBLE DAMAGES . — 65
557.09 FORCIBLE ENTRY; TREBLE DAMAGES .... — 65
566.04 LIMITATION..... — 65
508.02 REGISTRATION — 11

Preface

UNITED STATES LAW WEEK..... i

MASON'S DUNNELL MINNESOTA DIGEST.....iv
vi
viii
x
xi

MINNESOTA STATUTES ANNOTATED..... xii
xv

PATTON TITLES, SEC. 522
TRANSFERS OF TITLE BY DECREE
OF COURT..... xiii
23 CYCLOPEDIA 785.....Page 5,... ix

MINNESOTA RULES OF CIVIL PROCEDURE

RULE 4.03(a) — 15
4.06 — 15
24.04 — 16
38.03 — 6, 8, 9
54.01
55.01 — 9
56.04 — Preface xiv . 5
77.04. 8

FEDERAL RULES OF CRIMINAL PROCEDURE

RULE 4(d)(1) — 15
4g — 15
24c — 16

TABLE OF CASES

Page

BEIGLER v. CHAMBERLIN
145 Minn. 104 (1920) Pref. viii, 69

BISE v. UNITED STATES
144 F. 374 (Ind. 1906) 70

CHICKERING & SONS v. WHITE
42 MINN. 457 5

COMMONWEALTH v. HUMPHRIES,
7 Mass. 242 (1810) 71

CONLEY v. BUCK,
29 SE 710, 102 Ga. 752 73

CURTIS AND OTHERS AGAINST LEAVITT
15 N.Y. (1 SMITH) 96 (1857) 73

DIVIDE CREEK IRR. DIST. v. HOLLINGSWORTH,
(10 Cir.) 72 F(2d) 859, 863,
96 A.L.R. 937, 942 ((Pref. xvi, 66

FERGUSON v. KUMLER
25 Minn. 183 (1878)

GRAND RAPIDS & INDIANA R.CO. v. SPARROW,
1 LRA 480 (1888 Mich.) 72

HENNESSEY v. PEDERSON,
28 Minn. 461 Preface xii

LOWRY v. ERWIN,
39 Am. Dec. 556 (La. 1843) 67

MASTIN v. MAY,
127 Minn. 93 (1914) Preface x, 68

MATSON v. RIPLEY, 98 Ill. App. 479, Judg.
aff'd (1902) 63 NE 677, 196 Ill.
269. 71

INDEX

Page

NORTON v. BECKMAN,
53 Minn. 456, 459(1893) Preface vi, xii

PEOPLE v. FLECHTER, 60 N.Y.S. 777,
44 App. Div. 199, 14 N.Y. Cr. R.
328 (N.Y. Sup. 1899) 70

PEOPLE v. STEVENS
75 P. 62, 141 Cal. 488 71

PETSCH v. BIGGS,
31 Minn. 392 Preface vii 74

POPPEN v. WADLEIGHT 1952,
235 Minn. 400 75

SETTLEMIER v. SULLIVAN,
97 U. S. 444 Preface v., 16

92 N.W. 2d 569, Judg. KEY 217 Preface v., 16

STATE v. BERWEYER,
MAN. Unrep. Cas. 180 (188) 70

STATE v. DRUXINMAN,
75 P. 814, 34 Wash. 257 (1904) 74

STATE v. GOLDMAN,
47 A. 641, 65 N.J. Law, 394,
(N.J. Sup. 1900) 70

STATE v. NICOLSON,
32 S.E. 813, 124 N.C. 820 71

STATE v. SPRINGDALE,
215 NE 2d 592 (1966) Pref. iii, 75

TONES v. STATE, 88 S.W. 217, 48 Tex.
Cr. R. 363, 122 Am. St. Rep. 759 71

144 N.E. 2d 469 8
13 N.W. 71 97 U.S. 444 101 NW 293 Pre. xiii

P R E F A C E

T O
THE UNITED STATES SUPREME COURT

The United States LAW WEEK shows :

"35 LW 33 64 4-18-67
FEDERAL COURTS AND PROCEDURE
No. 1101, EVANSON v. NORTHWEST HOLDING CO.

Ruling below (CA 8, 368 F 2d 531) :

FEDERAL DISTRICT COURT HAS NO JURISDICTION OF SUIT TO REVIEW STATE SUPREME COURT DECISION IN WRONGFUL-DETAINER ACTION WHICH, PLAINTIFFS' ALLEGE, RESULTED IN WRONGFUL TAKING OF THEIR HOMESTEAD.

THE ABOVE, AND FOLLOWING CITATIONS, ARE FROM VARIOUS LAW BOOKS, REGARDING THE CASE AT BAR.

THE AUTHOR OF THE ABOVE CITATION IN LAW WEEK, USED THE WORDS, "WRONGFUL-DETAINER ACTION". THIS DOES NOT INDICATE WHETHER THE ACTION BEFORE THE COURT OF INQUIRY, WAS UNLAWFUL ENTRY OR UNLAWFUL DETAINER.

THIS IS UNDERSTANDABLE BECAUSE :

NEITHER THE COMPLAINT, NOR THE HEARING IN CRIMINAL COURT REVEALED WHETHER THE ACTION WAS UNLAWFUL ENTRY OR UNLAWFUL DETAINER.

P R E F A C E

THE CRIMINAL COURT IGNORED THE TIMELY ANSWER, (P. 204A, Petition For a Writ of Certiorari) AND DEMURRER, BY A PLEA OF "NOT GUILTY".

THE CRIMINAL COURT FAILED TO MAKE FINDINGS OF FACT AND CONCLUSIONS OF LAW, AND DID NOT MAKE A WRIT OF RESTITUTION THAT STATED WHAT THE CAUSE OF ACTION WAS BEFORE THE COURT OF INQUIRY.

AFTER ALL STATE COURT REMEDIES WERE EXHAUSTED — PETITIONERS TIMELY REMOVED FROM THE STATE SUPREME COURT, IN ACCORDANCE TO THE REMOVAL STATUTE, 28 USC 1441 ET SEQ., TO THE FEDERAL DISTRICT COURT, FOR AN ADJUDICATION ON THE SUBSTANTIAL STATE AND FEDERAL CLAIMS.

UNDER SEVERAL STATUTES, THE FEDERAL DISTRICT COURT ALSO HAS PENDENT JURISDICTION OF THIS REMOVED ACTION, NAMELY :

PREFACE

THE JUDICIAL SALES STATUTE 28 USC 2001,

THE DIVIL RIGHTS STATUTE 42 USC 1883,

THE THEFT OR ALTERATION OF RECORD OR PROCESS STATUTE 18 USC 1506,

THE POSTAL FRAUD STATUTE 18 USC 1341,

THE CIVIL CONSPIRACY STATUTE 28 USC 1343,

THE FEDERAL QUESTION; AMOUNT IN CONTROVERSY STATUTE 28 USC 1331,

THE CONSPIRACY TO DEFRAUD THE GOVERNMENT WITH RESPECT TO CLAIMS 18 USC 286, 287, and 371,

THE DUE PROCESS CLAUSE, IN U. S. AMENDMENTS FIVE AND FOURTEEN,

THE RIGHT TO BE SECURE IN THEIR PERSONS, HOUSES, PAPERS AND EFFECTS, UNDER U. S. AMENDMENT FOUR.

* * * THE RECORD CLEARLY REVEALS PETITIONERS HERE, HAVE MADE TIMELY COMPLAINTS TO STATE AND FEDERAL SOLICITORS REGARDING ACTS, OMISSIONS, AND TRANSACTIONS COMPLAINED OF IN THE PLEADINGS, AND NO ACTION HAS BEEN TAKEN BY ANY PUBLIC SOLICITOR.

PETITIONERS, AS A MATTER OF RIGHT, MAY MAINTAIN AN ACTION IN THEIR OWN NAME, AGAINST RESPONDENTS.

See: STATE v. VILIAGE OF SPRINDALE, 215 NE 2d 592 (1966)

PREFACE

MASON'S DUNNELL MINNESOTA DIGEST 3rd EDITION,
FEBRUARY, 1964

Prepared by the PUBLISHER'S EDITORIAL STAFF
Copyright 1964 by THE MASON PUBLISHING COMPANY,
FINCH INDUSTRIAL BUILDING ON PARK SQUARE,
ST. PAUL 1, MINNESOTA

SHOWS :

"APPEAL AND ERROR

"296a. APPEAL FROM ORDERS—STATUTE EXCLUSIVE.

APPEALS TO THE SUPREME COURT FROM THE MUNICIPAL COURT OF THE CITY OF MINNEAPOLIS IN UNLAWFUL DETAINER PROCEEDINGS LIE ONLY FROM THE JUDGMENT OF RESTITUTION; NEITHER AN ORDER FOR JUDGMENT NOR AN ORDER DENYING A MOTION TO SET ASIDE A WRIT OF RESTITUTION IS APPEALABLE.

NORTHWEST HOLDING CO. v. EVANSON (1963)
265 Minn. 562, 122 NW 2d 596."

* * * * * *

THE CRIMINAL COURT DID NOT ENTER A JUDGMENT OF RESTITUTION

INSTEAD, FORTY-THREE (43) DAYS LATER, AFTER TERM, A DEPUTY CLERK OF COURT, NOT AUTHORIZED BY ANY STATUTE OR COURT RULE, ISSUED A "WRIT OF RESTITUTION", WITHOUT FINDINGS OF FACT AND CONCLUSIONS OF LAW THAT SHOWED THE Plaintiff, N. W. HOLDING CO., WAS ENTITLED TO THE RIGHT OF POSSESSION OF THE PREMISES; AND WITHOUT SHOWING WHETHER THE ACTION BEFORE THE COURT OF INQUIRY WAS UNLAWFUL ENTRY OR UNLAWFUL DETAINER.

SEE: PAGE 39 TRANSCRIPT - 26 SEPT. 1961

PAGE 55 DECISION AND ORDER - 26 SEPT. 1961

PAGE 56 WRIT OF RESTITUTION - 8 NOV. 1961

PREFACE

CLEARLY, THE RECORD SHOWS, THE MINNESOTA SUPREME COURT, ON APPEAL, HAD JURISDICTION FOR THE PURPOSE OF REVERSING THE JUDGMENT IN ACCORDANCE TO STATUTE 566.04 LIMITATION, AND PURGING THE RECORD.

See: SETTLEMIER v. SULLIVAN. 97 U. S. 444 P. 286A

92 N.W. 2d 569. JUDGMENT KEY 217 P. 289A

of Petition for Writ of Certiorari.

THE MINN. SUPREME COURT, IN ACCORDANCE TO STATUTE, 557.08, FORCIBLE EVICTION AND 557.09, FORCIBLE ENTRY, HAD JURISDICTION TO GRANT THE HOMESTEAD OCCUPANTS AFFIRMATIVE EQUITABLE RELIEF.

THE MINN. SUPREME COURT ALSO HAD JURISDICTION TO REVIEW THE SEVERAL ACTIONS CONSOLIDATED, IN ACCORDANCE TO LAW, AND THE COURT RULES, AND GRANT AFFIRMATIVE EQUITABLE RELIEF.

IN THE MINN. SUPREME COURT, NO ANSWER WAS MADE BY RESPONDENT, N. W. HOLDING CO., OR BY ANY OF THE RESPONDENTS IN THE CONSOLIDATED ACTIONS.

A TIMELY APPLICATION FOR DEFAULT JUDGMENT WAS MADE AGAINST NORTHWEST HOLDING COMPANY, A MINN. CORPORATION.

PREFACE

MASON'S DUNNELL MINNESOTA DIGEST ALSO SHOWS:

"FORCIBLE ENTRY AND DETAINER

"3784. NATURE AND OBJECT OF ACTION.

WHILE THE MUNICIPAL COURT OF MINNEAPOLIS MAY ENTERTAIN JURISDICTION IN AN UNLAWFUL DETAINER ACTION NOTWITHSTANDING THE FACT THAT TITLE TO REAL ESTATE IS INVOLVED, THE COURT'S FUNCTION IS LIMITED TO RESOLVING THE RIGHT TO POSSESSION. IN ORDER EFFECTIVELY TO ASSERT HOMESTEAD RIGHTS, IT WOULD APPEAR NECESSARY TO BRING AN ACTION OF EJECTMENT NOT JUSTICIABLE IN MUNICIPAL COURT. DEFENDANTS IN UNLAWFUL DETAINER ACTION LOST THEIR HOMESTEAD RIGHTS BY FAILING TO PROPERLY APPEAR AND DEFEND IN DAMAGE SUIT, EXECUTION SALE, AND REGISTRATION OF TITLE PROCEEDING.

Northwest Holding Co. v. Evanson (1963)
265 Minn. 562, 122 NW 2d 596."

* * * * * *

IN NORTON v. BECKMAN, 53 MINN. 456, 459 (1893), THE COURT STATED : IN PROCEEDINGS UNDER 1878 G.S. CH. 84, THE PLEADINGS ARE TO BE CONSTRUED, AND ARE TO HAVE THE SAME EFFECT, AS IN A "CIVIL ACTION". WHEN THE ANSWER EXPRESSLY, OR BY FAILING TO DENY, ADMITS THE ALLEGATIONS IN THE COMPLAINT, THE ADMISSION IS EQUIVALENT TO PROOF. Hennessey v. Pederson, 28 MINN. 461.

PREFACE

IN PETSCH v. BIGGS, 31 MINN. 392, THE COURT STATED: SP. LAWS 1891, CH. 53, § 19, subd. 4, PROVIDES THAT THE PRACTICE AND PROCEEDINGS IN ACTIONS UNDER 1878 G.S. CH. 84, SHALL BE THE SAME AS IN JUSTICE COURT; § 18 OF THIS CHAPTER PROVIDES THAT ALL MATTERS IN EXCUSE, JUSTIFICATION AND AVOIDANCE OF THE ALLEGATIONS IN THE COMPLAINT SHALL BE SET UP IN THE ANSWER. THIS MUST BE UNDERSTOOD TO REFER TO MATTERS WHICH PER SE CONSTITUTE AN EXCUSE, JUSTIFICATION OR AVOIDANCE, WHICH OF THEMSELVES, AND WITHOUT AFFIRMATIVE AID FROM A COURT, ENTITLE THE DEFENDANT TO RETAIN THE PRESENT POSSESSION, AND DOES NOT INCLUDE THOSE MATTERS UPON WHICH A PROPER COURT MIGHT AFFORD THE DEFENDANT AFFIRMATIVE RELIEF, AND WHICH GO TO HIS RIGHT TO POSSESSION, ONLY AFTER SUCH RELIEF HAS BEEN GRANTED.

PREFACE

IN BEIGLER v. CHAMBERLIN, 145 MINN. 104, 106(1920)

THE COURT STATED :

IF THE LAND WAS THEN THE HOMESTEAD OF THE DEFENDANT IN THE ACTION, IT WAS EXEMPT FROM SEIZURE AND NO LIEN WAS ACQUIRED BY THE LEVY UNDER THE WRIT. THIS IS SETTLED LAW. IT WAS NOT NECESSARY TO PROTEST THE LEVY. THE DEFENDANT COULD IGNORE A SALE UPON AN EXECUTION ON ANY JUDGMENT THAT COULD BE ENTERED ON THE FINDINGS THAT WERE MADE IN THE CASE, AND AFTERWARDS ASSERT HIS HOMESTEAD RIGHT AS HE HAS DONE IN THIS ANSWER.

"THE STATUTE GIVES THE EXEMPTION ABSOLUTELY, AND WITHOUT MAKING THE RIGHT TO IT DEPENDENT UPON ANY AFFIRMATIVE ACTION UPON THE PART OF THE PERSON CLAIMING IT TOWARDS AN OFFICER LEVYING OR ABOUT TO LEVY UPON IT." FERGUSON v. KUMLER, 25 MINN. 183.

THE EDITORIAL STAFF OF DUNNELL's DIGEST, IGNORED OR OVERLOOKED THE SETTLED LAW. THE SAME MATTERS IN EXCUSE, ETC., MAY BE USED IN FORCIBLE ENTRY AND DETAINER, AS IN EJECTMENT.

- - - - - - - - - - - - - - - - - - -

MASON'S DUNNELL MINN. DIGEST ALSO SHOWS :

"378&a JURISDICTION AND PROCEDURE IN GENERAL

"NEITHER AN ORDER FOR JUDGMENT NOR AN ORDER DENYING A MOTION TO SET ASIDE A WRIT OF RESTITUTION IS APPEALABLE.

Northwest Holding Co. v. Evanson (1963)
265 Minn. 562, 122 NW 2d 596."

THE MINN. RULES OF CIVIL PROCEDURE APPLY TO FORCIBLE ENTRY AND UNLAWFUL DETAINER, THE SAME AS ANY OTHER CIVIL ACTION.

PREFACE

THE M.R.C.P., RULE 54.01, JUDGMENT AS USED IN THESE RULES INCLUDES A DECREE AND MEANS THE FINAL DETERMINATION OF THE RIGHTS OF THE PARTIES IN AN ACTION OR PROCEEDING.

23 CYC. 785 ORDER FOR JUDGMENT.

THE APPLICATION FOR JUDGMENT, IF SUCCESSFUL, SHOULD BE FOLLOWED BY AN ORDER OF THE COURT DIRECTING THE CLERK TO ENTER A JUDGMENT IN THE FORM AND TERMS SPECIFIED, AND A MERE EXPRESSION OF THE COURT'S OPINION THAT A DESIGNATED PARTY IS ENTITLED TO RECOVER IS NOT SUFFICIENT.

BLACK'S LAW DIC., 4TH ED., P. 1247

FINAL ORDER — ONE WHICH EITHER TERMINATES THE ACTION ITSELF, OR DECIDES SOME MATTER LITIGATED BY THE PARTIES, OR OPERATES TO DIVEST SOME RIGHT; OR ONE WHICH COMPLETELY DISPOSES OF THE SUBJECT-MATTER AND THE RIGHTS OF THE PARTIES.

BLACK'S LAW DIC., 4TH ED., P. 1785

"APPEAL" IS A PROCESS OF CIVIL LAW ORIGIN THAT ENTIRELY REMOVES CAUSE TO APPELLATE COURT SUBJECTING FACTS AS WELL AS LAW TO REVIEW AND RETRIAL.

THE TIMELY APPEAL TO THE MINN. SUPREME COURT, REMOVED THE CAUSE FOR THE PURPOSE OF PURGING THE RECORDS. THE PROCEEDING IN THE CRIMINAL COURT WAS PROHIBITED BY STATUTE 566.04.

PREFACE

MASON'S DUNNELL MINN. DIGEST ALSO SHOWS :

"HOMESTEAD
IN GENERAL

4196. TITLE ESSENTIAL TO SUPPORT EXEMPTION.

74 ALR 2d 1355 (estate or interest in real property to which a homestead claim may attach).

* * N O T E * *
THE RECORD SHOWS
PETITIONERS ENTERED INTO ORIGINAL POSSESSION PEACEABLY, UNDER TITLE IN: NOVEMBER OF THE YEAR 1919, AND HAVE BEEN IN CONTINUOUS, UNINTERRUPTED, NOTORIOUS, EXCLUSIVE, PEACEABLE POSSESSION OF THE HOMESTEAD UNTIL : THE FORCIBLE ENTRY AND THE FORCIBLE EVICTION AND THE FORCIBLE SEIZURE UNDER "COLOR OF LAW", BY RESPONDENTS ON NOVEMBER 30, 1961.

MINN. STATUTES CH. 566.04 PROHIBITS RESTITUTION UNDER THIS CHAPTER, OF THOSE IN QUIET POSSESSION FOR THREE YEARS NEXT BEFORE THE FILING OF THE COMPLAINT.

IN MASTIN v. MAY, 127 MINN. 93 (1914)

WHERE THE ORIGINAL POSSESSION WAS TAKEN PEACEABLY AND UNDER CLAIM OF RIGHT, IS NOT SUFFICIENT TO AUTHORIZE PROCEEDINGS UNDER SECTION 7657, G.S. 1913. EJECTMENT IS THE REMEDY IN SUCH CASES.

PREFACE

MASON'S DUNNELL MINN. DIGEST ALSO SHOWS :

"LIABILITY FOR DEBTS

"4208b. CREDITORS ACQUIRE NO RIGHTS BY UNAUTHORIZED LEVY.

THE STATE IS PARTICULARLY SOLICITOUS OF THE RIGHTS OF HOMESTEADERS, AND HAS INDICATED THAT EVEN AFTER AN EXECUTION SALE AN OWNER MAY HAVE HIS DAY IN COURT TO PROTECT HIS CLAIM.

Northwest Holding Co. v. Evanson (1963)
265 Minn. 562, 122 NW 2d 596.

PETITIONERS AGREE THIS CITATION CONFORMS WITH THE SETTLED LAW.

* * * * * *

"ABANDONMENT, WAIVER, FORFEITURE AND ESTOPPEL

"4217. WAIVER AND ESTOPPEL - CONFESSION OF JUDGMENT.

DEFENDANTS IN UNLAWFUL DETAINER ACTION LOST THEIR HOMESTEAD RIGHTS BY FAILING TO PROPERLY APPEAR AND DEFEND IN DAMAGE SUIT, EXECUTION SALE, AND REGISTRATION OF TITLE PROCEEDING.

Northwest Holding Co. v. Evanson (1963)
265 Minn. 562, 122 NW 2d 596.

SEE: 25 MINN. 183 (1878) FERGUSON v. Kumler.

HOMESTEAD EXEMPTION IS ABSOLUTE - THE STATUTE GIVES THE HOMESTEAD EXEMPTION ABSOLUTELY, WITHOUT MAKING THE RIGHT TO IT DEPENDENT UPON ANY AFFIRMATIVE ACTION UPON THE PART OF THE PERSON CLAIMING IT TOWARD AN OFFICER LEVYING UPON IT, OR ABOUT TO LEVY UPON IT.

HOMESTEAD RIGHTS ARE ACQUIRED BY ONE ENTERING INTO PEACEABLE POSSESSION OF THE PREMISES UNDER TITLE, AND OCCUPYING THE PREMISES AS A DWELLING.

* * * * * * *

MINNESOTA STATUTES ANNOTATED SHOWS :

"566.01 FORCIBLE ENTRY AND UNLAWFUL DETAINER.
3. COURTS

WHILE MUNICIPAL COURT OF MINNEAPOLIS MAY ENTERTAIN JURISDICTION OF UNLAWFUL DETAINER ACTION NOTWITHSTANDING FACT THAT TITLE TO REALTY IS INVOLVED, ITS FUNCTION IS LIMITED TO RESOLVING RIGHT TO POSSESSION AND CANNOT DETERMINE HOMESTEAD RIGHTS. Northwest Holding Co. v. Evanson, 1963, 265 Minn. 562, 122 N.W. 2d 596.

In NORTON v. BECKMAN, 53 MINN. 459 (1893)

THE COURT STATED: IN PROCEEDINGS UNDER 1878 G.S. CH. 84, THE PLEADINGS ARE TO BE CONSTRUED, AND ARE TO HAVE THE SAME EFFECT, AS IN A "CIVIL ACTION". WHEN THE ANSWER EXPRESSLY, OR BY FAILING TO DENY, ADMITS THE ALLEGATIONS IN THE COMPLAINT, THE ADMISSION IS EQUIVALENT TO PROOF. Hennessey v. Pederson, 28 Minn. 461.

In HENNESSEY v. PEDERSON, 28 MINN. 461, AT 463.

...THE JUDGMENT OF RESTITUTION MUST BE BASED UPON A FINDING, WHICH IN ITS TURN MUST BE BASED UPON INQUIRY, UPON A HEARING, UPON A TRIAL, OF THE COMPLAINT. THIS CANNOT MEAN ANYTHING LESS THAN

THAT THE COMPLAINANT MUST PROVE HIS CASE, OR, IN OTHER WORDS, MUST PROVE ENOUGH OF HIS COMPLAINT TO MAKE OUT HIS RIGHT TO RESTITUTION. TO THIS END HE MUST ADDUCE EVIDENCE, AND, IN THE ABSENCE OF IT, THE MAGISTRATE HAS NO RIGHT TO ENTER JUDGMENT FOR THE RESTITUTION SOUGHT....

PATTON TITLES SECTION 522 — West Publ. Co. TRANSFERS OF TITLE BY DECREE OF COURT.

THE VALIDITY OF ALL OFFICIAL CONVEYANCES DEPENDS DIRECTLY OR INDIRECTLY UPON SOME JUDGMENT OR DECREE. IF THE LATTER IS LACKING, OR IS INVALID, THE CONVEYANCE, TOGETHER WITH ANY INTERMEDIATE WRIT OR SALE, IS VOID, AND NO TITLE PASSES TO THE PURCHASER.

13 N. W. 71 97 U. S. 444 101 N.W. 293.

THE DEFENDANTS (PETITIONERS HERE), IN MPLS. CRIMINAL COURT, BY TIMELY ANSWER, ATTACHED FOR THE CRIMINAL COURT, A COPY OF THE HON. JUDGE PAUL S. CARROLL'S DATED JUNE 24, 1958 ORDER. THIS ORDER DENIED PLAINTIFF WILLIAM HOLMES' MOTION FOR SUMMARY JUDGMENT AGAINST PAUL ROSSO. STAY: TEN (10) DAYS.

THIS ORDER HAS NOT BEEN APPEALED FROM, OR SET-ASIDE OR VACATED.

SEE: M.R.C.P., RULE 56.04, 18 USC 1506
PAGE 223A, Petition for Writ of Certiorari.

PREFACE

MINNESOTA RULES OF CIVIL PROCEDURE
RULE 56.04

CASE NOT FULLY ADJUDICATED ON MOTION.

"If,...judgment is not rendered upon the whole case ....the court at the hearing of the motion,..... shall thereupon make an order....directing such further proceedings in the action as are just."

JUDICIAL NOTICE: THE JUDGMENT "ORDERED THAT SAID MOTION BE AND THE SAME HEREBY IS IN ALL THINGS DENIED."

THE CASE, HOLMES vs. ROSSO, HENN. CTY. DIS. COURT NO. 533990, WAS TERMINATED.

THE COURT DID NOT MAKE AN ORDER DIRECTING SUCH FURTHER PROCEEDINGS. THE DATED JUNE 24, 1958 ORDER WAS A FINAL ORDER BECAUSE NO APPEAL OR ANY OTHER PROCEEDING WAS TAKEN.

PREFACE

MINNESOTA STATUTES ANNOTATED SHOWS:

566.12
APPEAL; STAY

6. APPEALS TO SUPREME COURT

APPEALS TO THE SUPREME COURT FROM MUNICIPAL COURT OF MINNEAPOLIS IN UNLAWFUL DETAINER PROCEEDINGS LIE ONLY FROM JUDGMENTS OF RESTITUTION, AND NEITHER AN ORDER FOR JUDGMENT NOR ORDER DENYING MOTION TO SET ASIDE WRIT OF RESTITUTION IS APPEALABLE. Northwest Holding Co. v. Evanson, 1963, 265 Minn. 562, 122 N.W. 2d 596.

PETITIONERS ANSWER THIS CITATION, THE SAME, AS THE ABOVE CITATION ON: PREFACE xii.

THE MINNESOTA SUPREME COURT HAD JURISDICTION ON APPEAL, TO PURGE THE RECORD, IN ACCORDANCE TO THE MINN. ST. CH. 566.04 LIMITATION.

I N C O N C L U S I O N

THIS PETITION FOR REHEARING ON WRIT OF CERTIORARI, IS THE LAST CLEAR CHANCE TO HAVE THESE LAW DECISIONS AND CITATIONS, REVIEWED AND REVISED AND CORRECTED TO FOLLOW THE SETTLED LAW.

PREFACE

PETITIONERS' PETITION FOR WRIT OF CERTIORARI, AS WELL AS THE RECORD IN THE U. S. DISTRICT COURT OF MINNESOTA, ARE REPLETE WITH SUBSTANTIAL PLEADINGS TO SUPPORT SUBSTANTIAL STATE AND FEDERAL CLAIMS, AND CALL THE COURT'S ATTENTION TO THE SETTLED LAW.

IT IS IMPERATIVE, THAT THE U. S. SUPREME COURT GRANT THE PETITION FOR REHEARING, AS PRAYED FOR, AND MAINTAIN SETTLED, RECOGNIZED, CONSTITUTIONAL LAW.

THE RESPONDENTS MADE NO ANSWER

IN ANY

OF THE FEDERAL COURTS, OR IN

THE STATE SUPREME COURT REMOVED

FROM.

THE FEDERAL AND STATE CONSTITUTION, AND ALL THE STATUTES, STATE AND FEDERAL, AS WELL AS ALL THE STATE AND FEDERAL REPORTS, AND THE COMMON LAW,

S U P P O R T

PETITIONERS' RIGHT TO THE PEACEABLE POSSESSION OF THE HOMESTEAD PREMISES, TAKEN UNDER THE "COLOR OF LAW", BY FORCE, ORGANIZED VIOLENCE AND TERROR, ON NOVEMBER 30, 1961. SEE: In DIVIDE CREEK IRR. DIST. v. HOLLINGSWORTH (10 Cir.) 72 F (2d) 859, 863. 96 A.L.R. 937, 942.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1966

No. 1101

GORDON L. EVANSON AND MELBA P. EVANSON

PAUL DAN ROSSO AND PAULINA M. ROSSO,

PETITIONERS,

VS.

NORTHWEST HOLDING COMPANY,

A MINNESOTA CORPORATION,

RESPONDENT.

PETITION FOR REHEARING ON

PETITION FOR A WRIT OF CERTIORARI

To the United States Court of Appeals
for the Eighth Circuit.

I. PETITION FILED - NO RESPONSE OR OBJECTION.

On 27 FEBRUARY 1967, Petitioner filed a timely PETITION FOR WRIT OF CERTIORARI, with the Clerk of the United States Supreme Court.

THE RECORD (4-63 Civ. 457) WAS FORWARDED BY THE CLERK OF U. S. DISTRICT COURT, TO THE CLERK OF THE UNITED STATES SUPREME COURT, IN ACCORDANCE TO THE CRIMINAL COURT RULES.

PETITIONERS FILED WITH THE CLERK OF COURT, AN AFFIDAVIT OF PROOF OF SERVICE OF THE PETITION FOR WRIT OF CERTIORARI, AND ALSO AN AFFIDAVIT OF PROOF OF SERVICE, NOTIFYING RESPONDENTS OF THE FILING DATE OF PETITION FOR WRIT OF CERTIORARI; DOCKET NUMBER OF THE CASE; AND THE CONTENTS OF THE RECORD FILED IN THE COURT.

PETITIONERS, AFTER SERVICE OF THE PETITION, UPON THE RESPONDENT, NORTHWEST HOLDING COMPANY, A MINNESOTA CORPORATION, AS WELL AS UPON RESPONDENTS IN THE CONSOLIDATED AND INTERLOCKED SERIES OF TRANS-ACTIONS, DID NOT RECEIVE A RESPONSE OR OBJECTION THAT THE ALLEGED CLAIMS APPEAR TO BE IMMATERIAL AND MADE SOLELY FOR THE PURPOSE OF OBTAINING JURISDICTION AND/OR ARE WHOLLY INSUBSTANTIAL AND FRIVOLOUS AND/OR ARE INADVERTENTLY AND IMPROVIDENTLY MADE OR ALLEGED UNDER A MISAPPREHENSION OF THE FACTS.

II. PETITION DENIED.

PETITIONERS RECEIVED A LETTER DATED APRIL 17, 1967, FROM THE CLERK OF COURT, AS FOLLOWS:

"Dear Sir:

"The Court today denied the petition for writ of certiorari in the above-entitled case.

Very truly yours,
JOHN F. DAVIS, Clerk
By
/s/ C. T. Lyddan
Assistant

Paul Dan Rosso, Esq.
7 Ortman St. S.E.
Minneapolis, Minn. 55414
AIRMAIL"

- - - - - - - - - - - - - - -

III. VOID PROCEEDINGS.

THE PETITIONERS ON REHEARING, WILL BRING TO THE COURT'S ATTENTION, THE SEVERAL PROCEEDINGS IN THE STATE COURTS WHICH WERE VOID, AND HAD NO EFFECT AND COULD NOT FORM A BASIS FOR THE RIGHT OF POSSESSION OF HOMESTEAD PROPERTY, NOR A BASIS FOR TITLE TO THE HOMESTEAD PREMISES, NOR A BASIS TO INVADE AND SEIZE THE HOMESTEAD PROPERTY, NOR A BASIS TO SEIZE THE EXEMPT PERSONAL AND HOUSEHOLD POSSESSIONS, NOR A BASIS TO SEIZE THE RENTALS FROM THE TENANTS IN POSSESSION OF THE PREMISES UNDER THEIR LANDLORD'S TITLE,

NOR A BASIS TO OBTAIN A $28,000 MORTGAGE FROM TWIN CITY FEDERAL SAVINGS & LOAN ASSOCIATION, SECURED BY A TORRENS TITLE IN DEROGATION OF THAT OF THE REGISTERED HOMESTEAD OWNER, NOR THE BASIS FOR THE SEVERAL ALLEGED TRANSFERS OF THE TORRENS TITLE IN DEROGATION OF THAT OF THE REGISTERED HOMESTEAD OWNER,

NOR A BASIS TO TAKE AND CARRY AWAY THE GARAGES AND CONTENTS THEREIN, ON THE REAR OF THE HOMESTEAD LOT,

NOR THE BASIS TO HOLD PAUL DAN ROSSO IN HENNEPIN COUNTY JAIL FOR TEN (10) DAYS FOR REFUSING TO ANSWER INTERROGATORIES BEFORE AN EMPLOYEE OF PLAINTIFF'S ATTORNEY,

NOR A BASIS TO SEIZE THE JOINT SAVINGS ACCOUNT OF PAUL ROSSO AND PAULINA M. ROSSO,

NOR THE BASIS TO FILE FALSE INSTRUMENTS IN THE PUBLIC RECORDS,

NOR THE BASIS TO SELL OVER 6,000 POUNDS OF THE HOMESTEAD OWNERS' LIFELONG EXEMPT PERSONAL POSSESSIONS AND HOUSEHOLD GOODS, TO A FURNITURE DEALER IN RICE LAKE, WISCONSIN, ON AUGUST 22, 1966.

IV. IN LEDWEIN v. ROSSO

HENN. CTY. DIS. CT. # 532205

NO FINDINGS OF FACT AND CONCLUSIONS OF LAW WERE MADE BY THE COURT; NOR, DID THE COURT MAKE AN ORDER DIRECTING THE CLERK, TO ENTER A JUDGMENT IN THE FORMS AND TERMS SPECIFIED. 23 CYC. 785, MINN. RULES OF CIVIL PROCEDURE, RULE 52.

42 MINN. 457 CHICKERING & SONS v. WHITE.

AN ORDER FOR JUDGMENT WITHOUT FINDINGS CANNOT STAND.

AN EXECUTION PROCURED BY PLAINTIFF'S ATTORNEY FROM THE CLERK OF COURT WAS VOID BECAUSE NO JUDGMENT WAS ENTERED BY THE COURT.

V. HOLMES v. ROSSO

HENN. CTY. DIS. CT. # 533990

PLAINTIFF HOLMES MADE MOTION FOR SUMMARY JUDGMENT, THAT RESULTED IN THE FOLLOWING ORDER:

"ORDERED that said motion be and the same hereby is in all things denied.
Stay 10 days Dated JUNE 24, 1958
BY THE COURT: s/ Paul S. Carroll
Judge of the District Court"

THIS ORDER HAS NOT BEEN APPEALED FROM, OR SET-ASIDE OR VACATED. THE CASE WAS FULLY ADJUDICATED ON MOTION AND TERMINATED FURTHER PROCEEDINGS IN THE COURT.
See: M.R.C.P., RULE 56.04, 18 USC 1506
Page 223A, Petition for Writ of Certiorari.

AN EXECUTION PROCURED BY PLAINTIFF'S ATTORNEY FROM THE CLERK OF COURT WAS VOID BECAUSE THE PROCEEDINGS WERE TERMINATED BY THE COURT.

VI: LEDWEIN v. PAUL ROSSO; DAN ROSSO; PAULINE ROSSO; & WILLIAM HOLMES

HENN. CTY. DIS. CT. # 547205

A SPURIOUS COMPLAINT WAS SERVED UPON DAN ROSSO, AND COPIES LEFT FOR PAUL ROSSO AND PAULINA M. ROSSO.

THE SPURIOUS COMPLAINT ALLEGED FRAUDULENT TRANSFER OF THE HOMESTEAD PROPERTY, AND CLAIMED JUDGMENT LIENS UPON THE HOMESTEAD, AND ALSO CLAIMED PLAINTIFF HAD ATTORNEY LIENS UPON THE HOMESTEAD.

A TIMELY ANSWER WAS MADE BY ATTORNEY HENRY JOHNSON, REPRESENTING ROSSOS. (A GENERAL DENIAL).

NO FOLLOW-UP SERVICE WAS EVER MADE UPON ANY OF THE DEFENDANTS, A JURISDICTIONAL PREREQUISITE IN MINNESOTA.

A DEFAULT JUDGMENT WAS ENTERED WITHOUT JURISDICTION, AND WITHOUT NOTICE TO THE DEFENDANTS ROSSOS.

PLAINTIFF'S ATTORNEY OBTAINED EXECUTION WHICH WAS RETURNED UNSATISFIED.

VII. WILLIAM HOLMES V. PAUL ROSSO

UNLAWFUL DETAINER CASE # 32765

On 14 OCTOBER 1960, WILLIAM HOLMES INSTITUTED A SPURIOUS UNLAWFUL DETAINER ACTION AGAINST PAUL ROSSO, TO GAIN POSSESSION OF A BUILDING LOCATED AT 208 EAST HENNEPIN AVENUE, MINNEAPOLIS, MINNESOTA.

THE COMPLAINT ALLEGED PLAINTIFF HOLMES HAD SHERIFF'S TITLE TO THE BUILDING, AND PAUL ROSSO HAD REFUSED TO VACATE AFTER A MAILED NOTICE TO VACATE, FROM PLAINTIFF'S ATTORNEY.

THE COURT FOUND PAUL ROSSO "GUILTY", WITHOUT FINDINGS OF FACT AND CONCLUSIONS OF LAW.

ATTEMPTS BY A MR. WALTER B. ERICKSON, EXHIBITING A MINNEAPOLIS POLICE BADGE, TO OBTAIN POSSESSION OF THE BUILDING, WERE UNSUCCESSFUL.

VIII. IN THE MATTER OF THE APPLICATION OF WILLIAM HOLMES TO REGISTER THE TITLE TO CERTAIN LAND

HENNEPIN COUNTY DISTRICT CT. # 14838

ON 5 APRIL 1961, A NEWSPAPER CLIPPING WAS SERVED UPON MELBA P. EVANSON, AND A COPY LEFT FOR GORDON EVANSON.

ON 5 APRIL 1961, A NEWSPAPER CLIPPING WAS SERVED UPON PAULINA M. ROSSO, AND A COPY WAS LEFT FOR PAUL DAN ROSSO.

TIMELY ANSWERS TO LAND REGISTRATION #14838, WERE MADE BY EVANSONS AND ROSSOS, AND SERVED BY CERTIFIED MAIL TO THE CLERK OF HENN. COUNTY DISTRICT COURT.

SEE: PAGES 327A, 328A, and 329A, for ANSWERS (Petition for Writ of Certiorari)

NO FOLLOW-UP SERVICE WAS EVER MADE UPON DEFENDANTS TO VEST THE COURT WITH JURISDICTION, A PREREQUISITE IN MINNESOTA. RULE 38.03.

ALMOST FOUR (4) MONTHS AFTER SERVICE OF THE SUMMONS, ON 2 AUGUST 1961, THE SHERIFF'S RETURN WAS FILED BY THE DEPUTY CLERK OF COURT, A.C. HOPPER.

144 N.E. 2d 469 PLAINTIFF FILED...ACTION...AND NO PRAECIPE FOR SERVICE OF THE SUMMONS WAS FILED...THERE WAS NO "PENDING ACTION".

ON 2 AUGUST 1961, AN AFFIDAVIT OF NO ANSWER WAS MADE BY THE DEPUTY CLERK OF COURT, A.C. HOPPER.

ON 8 AUGUST 1961, THE COURT ENTERED DEFAULT JUDGMENT, WITHOUT A HEARING, AND WITHOUT NOTICE TO THE HOMESTEAD OCCUPANTS, AS REQUIRED BY THE M.R.C.P., RULE 77.04.

THE JUDGMENT ENTERED BY THE COURT WAS VOID UPON ITS FACE, BECAUSE OF MINNESOTA STATUTES 510, HOMESTEAD EXEMPTIONS; 508.02 ; THE MINN. RULES OF CIV. PRC. RULE 38.03; 55.01(3), AND IN CONFLICT WITH THE RECORDS AND THE FEDERAL STATUTES; JUDGE PAUL CARROLL'S ORDER DATED 24 JUNE 1958, NO. 533990, OF "DENIED ALL THINGS"; 18 USC 1506, AND IN CONFLICT WITH JUDGE EARL J. LYONS' PERSONAL KNOWLEDGE, THAT THE PREMISES DESCRIBED IN THE LAND REGISTRATION PROCEEDINGS, WERE THE NOTORIOUS, EXCLUSIVE, HOMESTEAD PREMISES OF THE DAN ROSSO FAMILY.

NO TITLE TO PROPERTY PASSES BY A SALE UNDER AN EXECUTION ISSUED UPON SUCH A JUDGMENT, OUT OF TERM.

NO PRAECIPE FOR SERVICE OF THE SUMMONS WAS FILED FOR ALMOST FOUR (4) MONTHS; THE COMPLAINT LAY DORMANT FOR ALMOST FOUR (4) MONTHS; THE TERM OF COURT HAD EXPIRED — WHEN THE ALLEGED DEFAULT OCCURRED ON APRIL 25, 1961. [redacted]

M.R.C.P. RULE 55 DEFAULT. 55.01 Judgment.

(3) IF OTHER RELIEF THAN THE RECOVERY OF MONEY BE DEMANDED AND THE TAKING OF AN ACCOUNT, OR THE PROOF OF ANY FACT, BE NECESSARY TO ENABLE THE COURT TO GIVE JUDGMENT, IT MAY TAKE OR HEAR THE SAME OR ORDER A REFERENCE FOR THAT PURPOSE, AND ORDER JUDGMENT ACCORDINGLY.

NO PROOF OF ANY FACTS
IN THE TORRENS PROCEEDINGS

The WILLIAM HOLMES' APPLICATION TO REGISTER LAND TITLE NO. 14838, CONSTITUTES THE FILING OF A LAWSUIT AGAINST ALL PERSONS NAMED THEREIN.

IF HOLMES' APPLICATION WAS SUCCESSFUL IN PROVING THAT HE IS THE OWNER OF THE LAND, THE COURT ENTERS AN ORDER SO FINDING, AND STATING ALSO THE MORTGAGES, LIENS, RESTRUCTIONS, ETC., TO WHICH SAID TITLE IS SUBJECT.

THE COURT ALSO ORDERS THE REGISTRAR OF TITLES TO REGISTER SUCH TITLE.

THE TORRENS CERTIFICATE PURPORTS TO BE CONCLUSIVE PROOF THAT THE TITLE IS AS THEREIN STATED, BUT, AS IN THE CASE OF OTHER EVIDENCES OF TITLE, THERE ARE EXCEPTIONS AND OBJECTIONS WHICH THE TORRENS CERTIFICATE DOES NOT COVER.

OBJECTIONS AND EXCEPTIONS TO THE TORRENS CERTIFICATE.

HOMESTEAD RIGHTS ARE ABSOLUTE, IN ACCORDANCE TO MINNESOTA CONSTITUTION, ARTICLE 1, SEC. 12, AND MINN. STATUTES CH. 510, HOMESTEAD EXEMPTIONS.

THE PETITIONERS, ARE NOT "TENANTS AT SUFFERANCE", THAT HAVE COME INTO POSSESSION OF LAND BY LAWFUL TITLE, AND NOW HOLD OVER BY WRONG, AFTER THE DETERMINATION OF THEIR INTEREST IN A TORRENS PROCEEDING.

THE TORRENS PROCEEDING MADE NO DETERMINATION AND/OR FINDINGS, THAT THE PERSONS IN POSSESSION OF THE DWELLING PREMISES WERE, OR WERE NOT, IN POSSESSION AS FEE OWNERS, OR, THE PROPERTY WAS, OR WAS NOT, OF HOMESTEAD CHARACTER.

THE TORRENS PROCEEDINGS MADE NO DETERMINATION OR FINDINGS THAT:

THE DATED JUNE 24, 1958 O R D E R "DENIED ALL THINGS, STAY 10 DAYS", THAT WAS NOT APPEALED FROM, SET-ASIDE, OR VACATED, WAS OR WAS NOT A FINAL ORDER, UNDER M.R.C.P. RULE 56.04, AND 18 USC 1506.

THE TORRENS PROCEEDINGS MADE NO DETERMINATION OR FINDINGS THAT:

WILLIAM HOLMES COULD REGISTER LAND IN DEROGATION OF THAT OF THE REGISTERED BY WARRANTY DEED, HOMESTEAD OWNER, MELBA P. EVANSON. M.S. Ch.508.02.

THE TORRENS PROCEEDINGS MADE NO DETERMINATION OR FINDINGS THAT:

WILLIAM HOLMES HAD A WORKMAN'S OR MATERIAL-MAN'S LIEN UPON THE EXEMPT HOMESTEAD PROPERTY. M. S. CH. 510.

THE TORRENS PROCEEDINGS MADE NO DETERMINATION OR FINDINGS THAT:

PERSONAL SERVICE IN ACCORDANCE TO THE COMMON LAW, AS GUARANTEED BY THE NORTHWEST ORDINANCE WAS MADE UPON THE HOMESTEAD OCCUPANTS, GORDON L. EVANSON AND PAUL DAN ROSSO.

THE TORRENS PROCEEDINGS MADE NO DETERMINATION OR FINDINGS THAT:

THAT HOMESTEAD OWNER'S RENTAL AGREEMENT WOULD TERMINATE WITH STORE TENANT IN PORTION OF HOMESTEAD, MR. H. H. WEESE, ON JULY 1, 1961, AND FURTHER RENTALS SHOULD BE PAID TO A STRANGER, MR. WILLIAM HOLMES.

THE TORRENS PROCEEDINGS MADE NO DETERMINATION OR FINDINGS THAT:

THE HOMESTEAD OWNER'S RENTAL AGREEMENT WOULD TERMINATE WITH STORE TENANT IN PORTION OF HOMESTEAD, MRS. FLORENCE MADY, ON OCTOBER 1, 1961, AND FURTHER RENTALS SHOULD BE PAID TO A STRANGER, MR. WILLIAM HOLMES.

THE TORRENS PROCEEDINGS MADE NO DETERMINATION OR FINDINGS THAT:

THE HOMESTEAD OWNER'S RENTAL AGREEMENT WOULD TERMINATE WITH MR. WILLIAM HIRSCH, TENANT OF PORTION OF REAR HOMESTEAD LOT, ON DECEMBER 1, 1961, AND FURTHER RENTALS SHOULD BE PAID TO A STRANGER, MR. WILLIAM HOLMES.

THE TORRENS PROCEEDINGS MADE NO DETERMINATION OR FINDINGS THAT:

THE HOMESTEAD OWNER AND FAMILY'S RIGHT OF POSSESSION OF THE HOMESTEAD WOULD TERMINATE, UPON SERVICE OF A CERTIFIED LETTER DATED AUGUST 18, 1961,

"Gordon Evanson and Melba P. Evanson
2326 Central Avenue N.E.
Minneapolis, Minnesota

Dear Gordon Evanson and Melba P. Evanson:

"This is to advise that I am the attorney for the Northwest Holding Company which has purchased the property at 2326 Central Avenue NE. and that you are hereby notified to vacate the premises that you are now occupying at this address within seven days from receipt of this letter.

"If you have not vacated the premises by that time, I shall commence whatever legal proceedings are necessary to secure possession of the premises for my client.

Very truly yours,
/s/ I. Mirviss I. Mirviss CERTIFIED MAIL
RETURN RECEIPT REQUESTED"

THE TORRENS PROCEEDINGS MADE NO DETERMINATION OR FINDINGS THAT :

THE DECREE OF REGISTRATION ENTERED AUGUST 8, 1961, IF NOT CONTESTED WITHIN SIX (6) MONTHS, WOULD BE FINAL ON FEBRUARY 8, 1962, AND THE RIGHTS OF THE HOMESTEAD OCCUPANTS WOULD BE TERMINATED BY A FINAL DECREE.

THE TORRENS PROCEEDINGS MADE NO DETERMINATION OR FINDINGS THAT :

VALID SERVICE WAS MADE FOR A PURELY PERSONAL JUDGMENT, WHEN : PERSONAL SERVICE WAS MADE ON 5 APRIL 1961, UPON GORDON L. EVANSON AND PAUL ROSSO, BY LEAVING A COPY AT THEIR USUAL PLACE OF ABODE. M.R.C.P., RULE 4.03(a), WITH SOME PERSON OF SUITABLE AGE AND DISCRETION THEN RESIDING THEREIN, F.R.C.P., RULE 4(d)(1).

AND,

ON AUGUST 2, 1961, THE SHERIFF FILING THE PRAECIPE OF SERVICE, WITH THE CLERK OF COURT. M.R.C.P., RULE 4.06. "...FAILURE TO MAKE PROOF OF SERVICE SHALL NOT AFFECT THE VALIDITY OF THE SERVICE."

FEDERAL RULES OF CIVIL PROCEDURE
RULE 4(g)

"...FAILURE TO MAKE PROOF OF SERVICE DOES NOT AFFECT THE VALIDITY OF THE SERVICE."

A SUBSTANTIAL DEVIATION FROM THE COMMON LAW.

UNDER THE NORTHWEST ORDINANCE OF 1787, ARTICLE II, "THE INHABITANTS OF THE SAID TERRITORY SHALL ALWAYS BE ENTITLED TO... JUDICIAL PROCEEDINGS ACCORDING TO THE COURSE OF THE COMMON LAW."

PETITIONERS BELIEVE, THE COMMON LAW SHOULD BE COMPLIED WITH IN JUDICIAL PROCEEDINGS INVOLVING PERSONAL JUDGMENTS. IN CONNECTION THEREWITH, PETITIONERS C L A I M :

M.R.C.P., RULE 4.03 (a) AND F.R.C.P. 4d(1) ARE UNCONSTITUTIONAL IN PART, NAMELY :

"...OR BY LEAVING A COPY AT HIS USUAL PLACE OF ABODE WITH SOME PERSON OF SUITABLE AGE AND DISCRETION THEN RESIDING THEREIN."

AND ALSO CLAIM:

M.R.C.P., RULE 4.06 AND F.R.C.P., RULE 4(g) ARE UNCONSTITUTIONAL IN PART, NAMELY :

"...FAILURE TO MAKE PROOF OF SERVICE SHALL NOT AFFECT THE VALIDITY OF THE SERVICE."

F.R.C.P., RULE 24(c)

"...WHEN THE CONSTITUTIONALITY OF AN ACT OF CONGRESS AFFECTING THE PUBLIC INTEREST IS DRAWN IN QUESTION IN ANY ACTION TO WHICH THE UNITED STATES OR AN OFFICER, AGENCY, OR EMPLOYEE THEREOF IS NOT A PARTY, THE COURT SHALL NOTIFY THE ATTORNEY GENERAL OF THE UNITED STATES AS PROVIDED IN TITLE 28, U.S.C., § 2403."

M.R.C.P., RULE 24.04

"...THE PARTY ASSERTING THE UNCONSTITUTIONALITY OF THE ACT SHALL NOTIFY THE ATTORNEY GENERAL..."

SETTLEMIER v. SULLIVAN, 97 U. S. 444 (1878)

1. THAT THE COURT, BY SUCH SERVICE, ACQUIRES NO JURISDICTION OVER THE PERSON OF A., AND ITS JUDGMENT WAS VOID.

AT PAGE 447.

NO THEORETICAL UNITY OF HUSBAND AND WIFE CAN MAKE SERVICE UPON ONE EQUIVALENT TO SERVICE UPON THE OTHER. PERSONAL CITATION TO THE DEFENDANT, OR HIS VOLUNTARY APPEARANCE, IS THE ESSENTIAL PRELIMINARY TO A PURELY PERSONAL JUDGMENT.

THE INABILITY OF THE OFFICER TO FIND THE DEFENDANT WAS NOT A FACT TO BE INFERRED, BUT A FACT TO BE AFFIRMATIVELY STATED IN HIS RETURN.

THE SUBSTITUTED SERVICE IN ACTIONS PURELY IN PERSONAM WAS A DEPARTURE FROM THE RULE OF THE COMMON LAW, AND THE AUTHORITY FOR IT, IF IT C O U L D B E A L L O W E D A T A L L, MUST HAVE BEEN STRICTLY FOLLOWED.

STATE OF MINNESOTA
COUNTY OF HENNEPIN

No 14838

DISTRICT COURT
FOURTH JUDICIAL DISTRICT

In the Matter of the Application to Register Title to Certain Land, of

WILLIAM HOLMES

ORDER AND DECREE
OF REGISTRATION

The above entitled matter, upon the motion of the applicant(s), came on for hearing at the Court House in the City of Minneapolis, said County and State, before the Referee, who has filed his report herein, and to whom said matter has been duly referred to hear the evidence in said cause and report his conclusions therefrom; and the Court having duly considered the Application, the Report or Reports of the Examiner, the evidence adduced by the applicant(s) and the report of the Referee, finds:

1. That according to the last official assessment thereof, the premises hereinafter described are of the assessed value of $2,000.00, exclusive of improvements. The full and true value thereof, exclusive of improvements, according to the last official assessment is $2,000.00.

2. That all the requirements of the law in respect to the application and any amendments thereof have been complied with and that all the defendants in this proceeding have been duly served with process as required by law or have consented to the registration herein and it further appears that no Answer, Demurrer or Notice of appearance has been filed in this proceeding, except the joint answer of the defendants, Jessie G. Samar and Johannah C. Samar, which answer has been withdrawn by written instrument duly filed herein.

3. That, except as hereinafter provided, none of the defendants named in the summons and any amendments or supplements thereto, have any right, title, estate, lien or interest in the real estate hereinafter described.

- 17 -

4. That the premises hereinafter described are occupied by Paul Rosso, Paulina Rosso, Gordon Evanson and Melba P. Evanson at sufferance; also by Leo Mady's Tavern and Accurate Advertising Carriers, Inc. pursuant to oral month to month tenancies.

(add any additional findings and number them beginning with number 5)

5. That Elbe File and Binder Co., Inc., a defendant herein, is a foreign corporation, organized under the laws of the State of Massachusetts, and as a non-resident defendant is duly served with summons by mailing as evidenced by the affidavit of the Clerk of this Court, duly filed herein.

6. That Leo Mady's Tavern, an occupant of the premises, is a sole proprietorship duly licensed by the City of Minneapolis to Florence E. Mady, and is operated and conducted by Florence E. Mady and Leo Mady, wife and husband.

7. That Twin City Typewriter Co., an occupant of adjoining Lot 3, is a sole proprietorship owned and operated by John M. Johnson, who has been duly served with summons in this proceeding.

8. That Paulina Rosso, a defendant herein, is also known as Pauline Rosso and is one and the same person as one of the grantors in Book 2220 of Deeds, Page 494.

9. That Anchor Laundry Co., a partnership, an occupant of adjoining Lot 5, has duly assented to this proceeding by written assent duly filed herein.

10. That the Paul Ross, who is the defendant and judgment debtor in judgments of this Court in cases No. 512834, 516223 and 525244 is not the same person as Paul Rosso in applicants chain of title.

11. That William Dunn Holmes, against whom the United States of [illegible] a tax lien in Case No. 1956, is not the owner of the [illegible] herein.

12. That any claim [illegible] Lot 2 and Lot 5, both adjoining, are maintained [illegible] and not as a matter of right.

FILED

AUG 8 1961

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED, as follows:

1. That a default as to each defendant named in the summons and any amendments or supplements thereto and all heirs and devisees of any of the persons named therein who are deceased and, "all other persons or parties unknown claiming any right, title, estate, lien or interest in the real estate hereinafter described", is hereby entered in the above entitled action.

2. That William Bolgan

whose post-office address is Village of Morgan

County of Redwood, State of Minnesota, is (~~are~~) the owner(s) of an estate in fee simple in the following described land in the County of Hennepin, State of Minnesota:

Lot 4, Block 9, Wilson's Re-arrangement of Blocks 2, 3, 6, 7, 9, 10, 11, 14, 15, 19, 20, 21, 24, 26, 29, 31, 33, 35, 37, 39, and 41 of East Side Addition to City of Minneapolis.

according to the recorded plat thereof.

(~~strike out the one which is not applicable~~)

3. That the said land be brought under the provisions and operation of Chapter 508 Minnesota Statutes, 1953 for the State of Minnesota, and all acts amendatory thereof, and that title thereto be confirmed and registered as provided in and by said act; subject, however:

To any rights or incumbrances which may be subsisting, specified in Section 508.25, Chapter 508, Minnesota Statutes, 1953, and all acts amendatory thereof.

To an inchoate right by the Laws of the State of Minnesota subsisting in Eva Holmes as the lawful spouse of William Holmes *(strike out when not applicable)*

To a judgment in favor of James Ledwein in the sum of $2686.20 in Hennepin County District Court Case No. 532205.

TO a judgment in favor of James Ledwein in the sum of $520.00 in Hennepin County District Court Case No. 547205.

To an attorney's lien in favor of Samuel Saliterman in the sum of $1350.00 in Hennepin County District Court Case No. 532205.

TO an Attorney's lien in favor of Samuel Saliterman in the sum of $520.00 in Hennepin County District Court Case No. 547205.

- 21 -

4. That ... William Holmes ... is xxx 29

years of age (xxxxxxxxx) and is (xxx under no disability and is xxxx married to Eva Holmes

Dated at Minneapolis, Minnesota.

August 8 1961

Earl J. Larson
Judge of said District Court

Decree entered this 8th day of August 1961, at 12:20 o'clock M

PHILIP C. SCHMIDT, Clerk of said District Court. by A G Hopper Deputy

- 22 -

STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT

I hereby certify that this is a true and correct copy of the original order and decree of registration entered in the above entitled proceeding.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said District Court, at the City of Minneapolis, in said County and State, this ... day of ... 19...

PHILIP C. SCHMIDT, Clerk of said District Court. ... Deputy

X. NORTHWEST HOLDING CO. v. EVANSONS UD # 33943
NORTHWEST HOLDING CO. v. ROSSOS UD # 33944

PETITIONERS MAKE REFERENCE TO THE FACTS,

AS STATED IN: PETITION FOR WRIT OF CERTIORARI.

ON PAGE 57 : PETITIONERS' TITLE SINCE 1919.

ON PAGE 59 : LETTER dated AUGUST 18, 1961,
to GORDON EVANSON & MELBA P.EVANSON
from: I. MIRVISS.

ON PAGE 60 : LETTER dated AUGUST 21, 1961,
TO: I. MIRVISS,
FROM: GORDON EVANSON AND
MELBA P. EVANSON

ON PAGE 61 COMPLAINT IN UNLAWFUL DETAINER
SERVED ON: GORDON EVANSON AND
MELBA P. EVANSON.

ON PAGE 204A ANSWER TO COMPLAINT IN UNLAWFUL
DETAINER.

ON PAGE 62 ORDER BY JUDGE BRUCE C. STONE,
MINNEAPOLIS CRIMINAL COURT,
DATED: SEPTEMBER 26, 1961.

PETITIONERS MAKE REFERENCE TO THE

WRIT OF RESTITUTION, ON PAGE 56., OF THIS

PETITION FOR REHEARING.

THE SPURIOUS COMPLAINT IN UNLAWFUL DETAINER

WAS NOT SERVED UPON PAUL ROSSO AND PAULINA ROSSO.
SEE: TRANSCRIPT, PAGE 44, PETITION FOR REHEARING.

THE SPURIOUS COMPLAINT IN UNLAWFUL DETAINER SERVED UPON GORDON EVANSON AND MELBA P. EVANSON, DID NOT STATE A CAUSE OF ACTION, AS REQUIRED BY THE UNLAWFUL DETAINER STATUTE, FOR THE RIGHT OF POSSESSION OF THE PREMISES. M.S. CH. 566.03.

THE U.D. STATUTE, 566.04 LIMITATION, PROHIBITS RESTITUTION UNDER THIS CHAPTER, OF THOSE IN QUIET POSSESSION FOR THREE YEARS NEXT BEFORE THE FILING OF THE COMPLAINT.

SEE: MASTIN v. MAY, 127 MINN. 93 (1914), at PREFACE x.

THE HOMESTEAD OCCUPANTS ENTERED PEACEABLY, UNDER TITLE IN NOVEMBER OF THE YEAR 1919, AND HAVE CONTINUOUSLY AND UNINTERRUPTEDLY OCCUPIED THE PREMISES AS HOMESTEAD.

AT THE HEARING IN MPLS. CRIMINAL COURT, THE N. W. HOLDING COMPANY, DID NOT ADDUCE ANY PROOF TO SHOW, THE RIGHT OF POSSESSION OF THE PREMISES.

THE ORDER OF THE COURT, DID NOT SHOW N.W. HOLDING CO., WAS ENTITLED TO THE RIGHT OF POSSESSION.

THE WRIT OF RESTITUTION PPEPARED BY A DEPUTY CLERK OF COURT, NOT AUTHORIZED BY ANY STATUTE OR COURT RULE, AFTER TERM, DID NOT CONTAIN FINDINGS OF FACT AND CONCLUSIONS OF LAW, AS REQUIRED BY M.R.C.P., RULE 52, AND STATUTE, AND DID NOT SHOW THE CAUSE OF ACTION BEFORE THE COURT OF INQUIRY.

ON NOVEMBER 30, 1961, WITHOUT NOTICE, WARNING, OR PROBABLE CAUSE, THE HOMESTEAD PROPERTY WAS INVADED, UNDER "COLOR OF LAW", AND BY FORCE, ORGANIZED VIOLENCE, AND TERROR, SEIZED, TOGETHER WITH THE EXEMPT PERSONAL AND HOUSEHOLD POSSESSIONS, OVER 6,000 POUNDS, AND PADLOCKS PLACED ON THE HOMESTEAD LIVING QUARTERS, AND HOMESTEAD GARAGES. Minn.St. Ch. 550.37 PROPERTY EXEMPT. See: Petition for Writ, P. 237A.)

PETITIONERS' EXEMPT PERSONAL AND HOUSEHOLD POSSESSIONS, WERE SOLD BY MOHAWK TRANSFER & STORAGE COMPANY, MINNEAPOLIS, TO : AMANS FURNITURE CO., RICE LAKE, WISCONSIN, FOR $350.00, ON AUGUST 22, 1966. See: PAGE 348A, Pet. for Writ.

XI. CONCLUSION.

THE REASON THE PETITION FOR REHEARING IS TO BRING TO THE COURT'S ATTENTION AND FOR REARGUMENT, THE FACT THAT, IN THE STATE COURTS, THERE WAS NO VALID JUDGMENT, AND A TOTAL WANT OF JURISDICTION IN ALL OF THE PROCEEDINGS.

TITLE AND THE RIGHT OF POSSESSION OF PROPERTY, CAN NOT BE DIVERTED BY PROCEEDINGS WITHOUT JURISDICTION.

THE COURT'S ATTENTION IS BROUGHT TO THE FACT THAT THE HOMESTEAD OCCUPANTS, IN PEACEABLE, CONTINUOUS POSSESSION FOR A PERIOD OF FORTY-TWO (42) YEARS, WERE TURNED OUT BY FORCE, ORGANIZED VIOLENCE AND TERROR, UNDER THE "COLOR OF LAW", DISTURBING THE PUBLIC PEACE,

AND THE FACT THAT, A PLAIN, SPEEDY, ADEQUATE REMEDY IS NOT AVAILABLE, AND THIS IS THE LAST CLEAR CHANCE TO SET ASIDE THE VOID JUDGMENTS AND PURGE THE RECORDS.

AND THE FACT THAT, HOMESTEAD PREMISES ARE GUARANTEED BY THE MINN. CONSTITUTION, ART. 1, SEC. 12, AND STATUTE CH. 510, ABSOLUTELY - AGAINST SEIZURE AND SALE FROM UNAUTHORIZED LIENS, LEVYS, SHERIFF SALES, JUDGMENT CREDITORS, AND TORRENS PROCEEDINGS IN DEROGATION OF THAT OF THE REGISTERED OWNER.

THE COURT'S ATTENTION IS BROUGHT TO THE FACT THAT EXEMPT PERSONAL PROPERTY IS GUARANTEED BY THE MINN. CONST., ART. 1, SEC. 12, AND BY MINN. ST. CH. 550.37 ABSOLUTELY - AGAINST SEIZURE AND SALE FROM UNAUTHORIZED LIENS, LEVYS, SHERIFF SALE, JUDGMENT CREDITORS AND WAREHOUSE-MEN'S LIENS.

AND THE FACT THAT, JUDICIAL PROCEEDINGS DEVIATE FROM THE COMMON LAW GUARANTEES, AND PORTIONS OF THE COURT RULES ARE UNCONSTITUTIONAL.

AND THE FACT THAT CONSTITUTIONAL AND STATUTORY GUARANTEES THAT ARE ABSOLUTE, AS IN HOMESTEAD PREMISES, EXEMPT PROPERTY, AND COURT PROCEEDINGS, IN ACCORDANCE TO THE PRINCIPLES OF THE COMMON LAW, AND THE SETTLED LAW, FOR THE ENTIRE HISTORY OF OUR NATION, WILL HAVE ALL BEEN IMPAIRED.

XII. PROCEDURAL HISTORY

THE RESPONDENT, N. W. HOLDING COMPANY, A MINNESOTA CORPORATION, DID NOT INFORM THE COURT, AS WELL AS THE PETITIONERS, THE ACTUAL "CIRCUMSTANCES", AND SURROUNDINGS, UNDER WHICH THEY "WILL NEVER BUY A BUILDING UNDER THOSE CIRCUMSTANCES AGAIN".

"CIRCUMSTANCES"

Date:

AUG. 18, 1961 — Letter addressed and certified mailed to Gordon Evanson & Melba P. Evanson's HOMESTEAD, 2326 Central Ave. N.E., signed by I. MIRVISS, which states in part:

"...you are hereby notified to vacate the premises that you are now occupying at this address within seven days from receipt of this letter". (MINN. S.CT. RECORD, P. 29).

AUG. 18, 1961 — First Fedrl. S&L Assn. MORTGAGE NO. 3303935. (MINN. S.CT. SUPPLEMENTARY RECORD, P. 43a)

AUG. 18, 1961 — Twin City Federal Savings & Loan Assoc., MORTGAGE NO. 666315, $28,000 to N.W. HOLDING CO., secured on PETITIONERS'HOMESTEAD PROPERTY. (MINN. S.CT. SUPPLEMENTARY RECORD P. 43a).

Date - of "CIRCUMSTANCES"

AUG. 21, 1961 — TWIN CITY FED. SAV. & LOAN ASSOC. PAID, HOMESTEAD TAXES (rate) on PETITIONERS' HOMESTEAD. (MINN. S.CT. RECORD, P. 30)

AUG. 22, 1961 — Filing Date on CERTIFICATE OF TITLE. (MINN. S.CT. SUPPLEMENTARY REC. P. 43a)

AUG. 30, 1961 — Date of ATTORNEY'S TITLE OPINION, addressed to TWIN CITY FED. SAV. & LOAN ASSOC., MPLS. (MINN. S.CT. RECORD, P. 227).

SEP. 14, 1961 — Date on ASSIGNMENT OF RENTS. WM. HOLMES AND EVA HOLMES assigned to N.W. HOLDING CO., all of the rents accruing or payable on or after JULY 1, 1961. (MINN. S.CT. BRIEF, P. 112)

SEP. 19, 1961 — Date on AFFIDAVIT attached to Complaint in Unlawful Detainer, signed by Attny. ARNOLD I. FEINBERG. (MINN. S.CT. RECORD, P. 4).

SEP. 26, 1961 — HEARING DAY, Mpls. Municipal Court, brought by N.W. HOLDING CO., Unlawful Detainer Actions, before JUDGE BRUCE C. STONE, in which the Complainant introduced NO EVIDENCE to PROVE his case, NEVERTHELESS, JUDGE STONE stated to the ABSOLUTE HOMESTEAD PROPERTY OWNER, "The Writ will be issued", WITHOUT MAKING FINDINGS AND CONCLUSIONS OF LAW. (MINN. S.CT. RECORD, P. 39)

302 NY 290 — DUE PROCESS INSISTS ON A REAL HEARING, NOT A SHAM OR PRETENSE.

Hennessey v. Pederson
28 Minn. 461

THE COMPLAINANT MUST PROVE HIS CASE.

SEE: TRANSCRIPT OF PROCEEDINGS, U.D. # 33943 and 33944, before Judge BRUCE C. STONE, 26 September 1961. PETITION FOR REHEARING U.S. SUPREME COURT NO. 1101, Page 39.

SEP. 29. 1961

Letter addressed and registered mailed to MADY'S PLACE, 2324 Central Ave. N.E., Mpls., Minn., signed by MELVIN C. GITTLEMAN, President, National Properties, 3127 Nicollet, Minneapolis, which states in part :

"All rents from JUNE 30, 1961 and all future rents are now payable directly to this office. We will expect to receive your check covering the JULY, AUGUST, SEPTEMBER AND OCTOBER 1961 RENTS WITHIN the next few days."
(MINN. S.CT. BRIEF, P. 111).

OCT. 10. 1961

HEARING DAY, Mpls. Municipal Court, before JUDGE LINDSAY G. ARTHUR, on MOTION TO SET-ASIDE AS UNCONSTITUTIONAL AND NULL AND VOID, etc., (MOTION - found in M. S.CT. RECORD, P 59) (NOTATIONS OF COURT PROCEEDINGS - MINN. S.CT. RECORD, P.71)

OCT. 28. 1961

ORDER, Dated 28 OCT. 1961, by Judge LINDSAY G. ARTHUR, - Denied - 10-day stay granted. The ORDER contained NO FINDINGS as requested. (MINN. S.CT. RECORD, P. 77).

Date:

NOV. 20. 1961

ORDER NUNC PRO TUNC, dated 20 NOV. 1961, by Judge ARTHUR, contained no Findings, and was received on 21 NOVEMBER 1961, by mail, AFTER the HOMESTEAD was SMASHED OPEN AND INVADED. (MINN. S.CT. RECORD, P. 81)

NOV. 21. 1961

THE FORCIBLE ENTRY AND TRESPASS INVASION BY N.W. HOLDING CO., A MINN. CORP.'S ATTORNEYS AND AGENTS, WITH MARVIN WERNER; MOHAWK TRANSFER & STORAGE CO.; MINNEAPOLIS POLICE; POLICE OFFICERS WALTER B. ERICKSON, C.W. ZANE, and MORRIS J. MATTHEWS; DEPUTY SHERIFF, together with OTHERS - of PETITIONERS' HOMESTEAD.

NOV. 21. 1961

HEARING, 2:00 P.M., Before Mpls. Municipal Court JUDGE DONALD BARBEAU, in Unlawful Detainer Action # 34129, :

Melba P. Evanson, Homestead Property Owner,
vs.
Mrs. Florence Mady, Store Tenant, occupying a Portion of Homestead Prop., 2324 Central.

(SEE: MINN. S.CT. NO. 38771,
ANSWER TO RESPONDENTS MOTION FOR DISMISSAL
AND
APPELLANTS' MOTION FOR SPECIAL RELIEF,
PAGE 20, ITEM 103.)

Date:

NOV. 24. 1961

HEARING, 2:00 P.M., Before Mpls. Municipal Court Judge DONALD BARBEAU, DELAYED, until DECEMBER 1, 1961, because Attorney ARNOLD I. FEINBERG, was supposedly going to St.Paul, Minn., for a hearing.

N.W. Holding Co. v. Evansons U.D. # 33943
A N D
N.W. Holding Co. v. Rossos U.D. # 33944

SEE: ANSWER TO RESPONDENTS, etc. P.22
ITEM 108 - Minn.S.CT.)

MINN. S.CT. RECORD, P. 88)

NOV. 28. 1961

HEARING, 2:00 P.M., Before Mpls. Municipal Court Judge DONALD BARBEAU, in Unlawful Detainer Action:
Melba P. Evanson, Homestead Property Owner,
vs. UD # 34129
Mrs. Florence MADY, Store Tenant, occupying a Portion of Homestead Prop., 2324 Central.

(SEE: MINN. S.CT. ANSWER TO RESPONDENTS,
Page 23, ITEM 114)
MINN. S.CT. RECORD, P. 93)

NOV. 30. 1961 THE SECOND FORCIBLE ENTRY AND TRESPASS INVASION, AND SEIZURE OF THE HOMESTEAD OWNERS' EXEMPT PERSONAL PROPERTY AND HOMESTEAD PROPERTY, IN CONTEMPT OF DIS. JUDGE JOHN A. WEEKS' DTD. NOV. 21, 1961, RESTRAINING ORDER, AND IN CONTEMPT OF SCHEDULED HEARING DEC. 1, 1961, IN MUN. COURT, AND IN CONTEMPT OF SCHEDULED HEARING DEC. 7, 1961, IN MINNESOTA SUPREME COURT.
(MINN.S.CT. ANSWER TO RESP. Page 24, ITEM 117).

Date:

DEC. 7. 1961

HEARING DAY, MINNESOTA SUPREME COURT CASE # 38634, EVANSON & ROSSO vs. N.W. HOLDING CO., PETITION AND MOTION FOR SPECIAL RELIEF, an Extra-ordinary Remedy. (MINN.S.CT. RECORD, P. 95 and 98.)

DEC. 4. 1961

RESPONSE OF DEFENDANT NORTHWEST HOLDING CO., TO PLAINTIFF'S PETITION AND MOTION.
AF F I D A V I T, signed by Arnold I. Feinberg (MINN. S.CT. RECORD, P. 101 and 103).

DEC. 6. 1961

EVANSONS & ROSSOS' MEMO TO AID THE COURT AND ANSWER TO RESPONSE OF DEFENDANT, Case No. 38634. (MINN. S.CT. RECORD, P. 105).

DEC. 13. 1961 MINN. SUP. COURT ORDER, # 38634, "You will please take notice that on this date the following order was entered in the above entitled cause:
"IT IS ORDERED that the petition for special relief be, and the same hereby is denied. BY THE COURT". (MINN.S.CT. RECORD, P. 113).

MARCH 1962 PAUL DAN ROSSO visited the New Chief JUSTICE, MR. OSCAR R. KNUTSON, at the State Capitol, and was told by Chf. Justice KNUTSON, we (Court) NEVER HAD THAT CASE (Evansons & Rossos vs. N.W. HOLDING CO. #38634.

Justice Knutson checked in his small appointment book and showed Paul Rosso, that he did not have ANY notations regarding CASE No. 38634, on the page dated DECEMBER 7, 1961.

Date:

JANUARY 10, 1962

Dep. Sheriff served PAUL ROSSO, a CANCELLATION OF CONTRACT FOR DEED.
(MINN.S.CT. RECORD, P. 124)
NOTE: PAUL ROSSO had never entered into a contract for deed with anyone.
(The State Real Estate Div. took NO ACTION in the matter. (MINN.S.CT. RECORD, P. 123.)

APRIL 27, 1962

HOMESTEAD NOTICE Filed in the Henn. County Register of Deeds Office.
(MINN.S.CT. SUPPLEMENTARY RECORD, P. 46(a).

MAY 9, 1962 NOTICE OF APPEAL TO THE SUPREME COURT (MINN.S.CT. RECORD, P. 233).

JUNE 11, 1962

FILED in MINN. SUPREME COURT - BRIEF AND RECORD CASE NO. 38771, with Dep. Clerk JOHN McCARTHY, plus four (4) PETITIONS :

TO RESTRAIN THE RENTAL OF LIVING QUARTERS, 2324-2326 CENTRAL AVE. N.E., MPLS., MINN.

TO RESTRAIN THE SALE OF PERSONAL AND HOUSE-HOLD POSSESSIONS,

TO RESTRAIN THE ISSUANCE OF PERMIT, TO WRECK OR REMODEL THE HOMESTEAD PREMISES,

REQUEST FOR AN EARLY HEARING.

NOTE: ALL PETITIONS WERE DENIED THE SAME DAY, JUNE 11, 1962.

Date:

JUNE 12, 1962 SHERIFF SALE OF PETITIONERS' EXEMPT PERSONAL AND HOUSEHOLD POSSESSIONS.

JUNE 13, 1962 FILED in Minn. SUP. COURT, NOTICE OF MOTION, AFFIDAVIT, and MOTION FOR SPECIAL RELIEF, # 38771, to be HEARD: JUNE 22, 1962.

JULY 2, 1962 DATE of Letter with NOTICE OF MOTION MOTION FOR DISMISSAL and AFFIDAVIT, prepared by N. W. Holding Company.

JULY 13, 1962 FILED PRINTED BOOKLET ENTITLED : ANSWER TO RESPONDENTS MOTION FOR DISMISSAL AND APPELLANTS' MOTION FOR SPECIAL RELIEF. Case No. 38771.

JULY 20, 1962 ORDER, by MINN. S. CT., states in part: "...the motion to dismiss the appeal be denied..."

FILED COPIES with Clerk of Minn. Supreme Court, of NOTORIZED AFFIDAVITS, signed by Homestead NEIGHBORS, Regarding: THE EXCLUSIVE POSSESSION THE NOTORIOUS POSSESSION AND HOMESTEAD PROPERTY OF DAN ROSSO AND FAMILY.

AUGUST 13, 1962 The DATE the N.W. Holding Co., TOOK AND CARRIED AWAY, the HOMESTEAD GARAGES AND THE CONTENTS THEREIN.

OCTOBER 31, 1962 APPELLANTS made Application for WRIT OF SUPERVISORY CONTROL, to CORRECT ERRONEOUS RULINGS OF THE Hennepin County District Court.

Date:

NOVEMBER 30, 1962 — THE SIX CONSOLIDATED CASES WERE SERVED BY SHERIFF UPON THE PARTIES, AND THE SHERIFF'S RETURNS, TOGETHER WITH THE ORIGINAL PETITIONS WERE PROMPTLY SENT BY REGISTERED MAIL TO THE CLERK OF MINN. SUPREME COURT FOR FILING.

DEC. 5, 1962 — APPLICATION FOR DEFAULT JUDGMENT AGAINST N. W. HOLDING COMPANY.

DECEMBER 6, 1962 — SUPPLEMENTARY PETITION (HOMESTEAD GARAGES & CONTENTS TOOK AND CARRIED AWAY. FILED - MINN. SUPREME CT.)

DECEMBER 6, 1962 — H E A R I N G D A Y Minn. S.CT. Case No. 38771

NOTE: NO BRIEF filed by N.W. Holding Co.

NO PRINCIPAL DEFENDANT appeared to represent N. W. HOLDING COMPANY.

NO EVIDENCE WAS INTRODUCED TO SUPPORT THE CLAIM FOR POSSESSION OF THE PREMISES INVOLVED.

SEE : BOOKLET, entitled: PETITION FOR REHEARING, P. 14, ORAL ARGUMENTS PRESENTED BY PAUL DAN ROSSO BEFORE MINNESOTA SUPREME COURT.

JUNE 21, 1963 — O P I N I O N 265 MINN. 562

JUNE 27, 1963 — MOTION FOR A DIRECTED VERDICT, AND JUDGMENT ON THE PLEADINGS AND DEFAULT JUDGMENT.

Date:	
JULY 1 1963	NOTICE OF TAXATION OF COSTS set for 7/16/63 Filed.
JULY 1, 1963	PETITIONS AND MOTIONS RETURNABLE 7/8/63 Filed.
JULY 3, 1963	DEMAND FOR JUDGMENT against N.W. HOLDING COMPANY AND SIX APPLICATIONS FOR DEFAULT JUDGMENT, against the SIX CONSOLIDATED CASES.
JULY 8, 1963	OBJECTIONS TO PRETENDED "AFFIDAVIT OF DISBURSEMENTS AND NOTICE OF TAXATION OF COSTS".
JULY 8, 1963	MOTIONS BY APPELLANTS FILED RETURNABLE 7/8/63
JULY 9, 1963	MOTIONS DENIED - ORDER ENTERED.
JULY 15, 1963	MOTION FOR EXTENSION TO SERVE AND FILE PETITIONS FOR REHEARING Filed - returnable 7/22/63.
JULY 16, 1963	COSTS TAXED $25.50
JULY 26, 1963	ORDER ENTERED - MOTION DENIED.
JULY 26, 1963	JUDGMENT OF DISMISSAL ENTERED IN BOOK G-3
JULY 26, 1963	JUDGMENT ROLL MADE AND FILED.
JULY 26, 1963	REMITTITUR MAILED TO CLERK BELOW ORIGINAL FILES RETURNED TO CLERK BELOW BY MAIL

Date:

JULY 26, 1963 ORIGINAL FILES, FIDELITY SECURITIES & INVESTMENT CO., v. EVANSON ET AL RETURNED TO CLERK OF HENNEPIN COUNTY DISTRICT COURT BY MAIL.

JULY 26, 1963 ORIGINAL FILES IN RE: APPLICATION OF HOLMES, RETURNED TO CIERK OF HENN COUNTY DIS. COURT., BY MAIL.

AUGUST 3, 1963 ORDER, denied, MOTION FOR ENLARGEment OF TIME FOR REHEARING.

AUGUST 15, 1963 ORDER, denied, SECOND MOTION FOR ENLARGEMENT OF TIME FOR REHEARING.

AUGUST 17, 1963 NOTICE OF MOTION AND MOTION FOR ENLARGEMENT OF TIME UNTIL 31 AUGUST 1963.

SEPT. 7, 1963 NOTICE OF MOTION AND MOTION TO CONSOLIDATE CASES FOR REHEARING

SEPT. 19, 1963 "BRIEF OF LAW AND FACT", PREPARED BY ATTORNEY FRANK M. FUDALI, representing MR. H. H. WEESE and MRS. FLORENCE MADY.

SEPT. 23, 1963 ANSWER to the Pretended "BRIEF OF LAW AND FACT".

NOV. 8, 1963 MEMORANDUM (Prepared by APPELLANTS)

NOV. 22, 1963 ORDER, "PETITION FOR REARGUMENT DENIED".

NOV. 26, 1963 LETTER (prepared by Appellants) addressed to EACH DIVISION of the Minnesota Supreme Ct. (No response).

DEC. 13, 1963 REMOVAL PETITION AND BOND WAS TIMELY FILED WITH THE U. S. DIS. COURT OF MINN. (4-63 CIV. 457).

N. W. Holding Co. a Minn. Corp. V.
Supreme Court Record, Page - 39 -

Case No. 33943 and Case No. 33944

TRANSCRIPT OF PROCEEDINGS

The above-entitled matters came duly on for hearing before the Honorable Bruce C. Stone, one of the Judges of the above named Court, on the 26th day of September, 1961, at the hour of 2:00 o'clock p.m., without a jury, in the Court House in the City of Minneapolis, Minnesota.

Arnold I. Feinberg, Esq., appeared as attorney for Northwest Holding Co.

The defendants, in both actions, appearing pro se.

MR. ROSSO: I want to have your attention. My name is Paul Rosso and this is Paulina Rosso. You read our names off as though we were in this.

MRS. EVANSON: I am Melba Evanson and this is my husband.

MR. ROSSO: They have submitted a written answer to this complaint and unlawful detainer and I have submitted an affidavit in prejudice of Judge Sletten. I wish the Court to study this and give it serious consideration, which it warrants.

THE COURT: Initially, let's get to the plea first of all. Let's take the first case that we called, which is the Northwest Holding Company against Gordon Evanson and Melba Evanson. Mr. Rosso, are you trying to intervene in this case?

MR. ROSSO: You read my name off as

though I were summoned up here.

THE COURT: I think you may have a chair just now. We haven't gotten to this case yet.

MRS. EVANSON: I understood him to say it was one and the same.

MR. FEINBERG: They are individual cases. We are under the impression they were both served.

THE COURT: Is the same premises involved?

MR. FEINBERG: Same premises.

THE COURT: Maybe we can hear them together then.

MR. ROSSO: Sure, let's do that.

(Witnesses sworn.)

THE COURT: Initially, on the charge of unlawful detainer, what is your plea, Mr. Gordon Evanson; guilty or not guilty?

MR. EVANSON: Not guilty.

THE COURT: Mrs. Evanson?

MRS. EVANSON: Not guilty.

THE COURT: And on the case of the Northwest Holding Company vs. Paul Rosso and Paulina Rosso, what is your plea, Mr. Rosso?

MR. ROSSO: Not guilty of anything.

THE COURT: And Mrs. Rosso; guilty or not guilty?

MRS. ROSSO: Not guilty, Your Honor.

THE COURT: Okay. You may proceed, Mr. Feinberg.

MR. FEINBERG: Mr. Mirviss, will you take the stand?

ISRAEL MIRVISS

was called as a witness in behalf of plaintiff herein, being first duly sworn according to law, on his oath testified as follows:

DIRECT EXAMINATION

BY MR. FEINBERG:

Q Would you state your full name?
A First name, Israel. Mirviss.

Q And your associated with the Northwest Holding Company, a Minnesota corporation?
A Yes, sir. I am the president of Northwest Holding Company.

Q And Northwest Holding Company, a corporation, is the plaintiff in this action?
A Yes, sir.

Q Did Northwest Holding Company, your company, acquire title to the premises commonly known as 2326 Central Avenue Northesst, Minneapolis, Minnesota, legally described as Lot 4, Block 9, Wilson's Re-arrangement of Blocks 2, 3,6,7,9,10,11,14,15,19,20,21,24,26,29, 31,33,35,37,39 and 41 of the East Side Addition to City of Minneapolis?

A Yes, sir. That was purchased from the Holmes and I recorded the Deed and the Registrar of Titles issued me the owner's Duplicate Certificate; that is, issued the corporation the owner's Duplicate Certificate.

(Plaintiff's Exhibit No. A was marked for identification.)

Q Showing you Plaintiff's Exhibit A, is that the owner's Duplicate Certificate of Title issued by the Registrar of Titles, Hennepin County?

A Yes, sir. That is No. 333703.

MR. FEINBERG: Offer Plaintiff's Exhibit A.

THE COURT: Any objection?

MR. ROSSO: None.

THE COURT: Would you like to see it?

MR. ROSSO: No.

MRS. EVANSON: Yes.

Q (By Mr. Feinberg) At the time your company acquired title to the described premises, did you discover that Mr. and Mrs. Rosso and Mr. and Mrs. Evanson occupied portions of the premises?

A That is correct.

Q And have you since that time sought to recover the premises from these people?

A That is correct.

Q And have they refused consistently to vacate these premises?

A That is correct.

MRS. EVANSON: If I may be so bold to say it's fraudulent.

THE COURT: Legal objection. Is that your objection? The objection is overruled. It may be received and entered into evidence.

(Plaintiff's Exhibit A was received in evidence.)

THE COURT: The Certificate, you see, of the Certificate of Title—. You may at the appropriate time produce evidence as to any claim of fraud, but an offer of a Certificate of Title properly authenticated is admissible to evidence to attempt to show the title.

Q (By Mr. Feinberg) Mr. Mirviss, in connection with the premises described, did you have occasion to examine the records of the Registrar of Titles?

A Yes. I examined the records, and, in my opinion, title to this property and—

Q (Interrupting) You are an attorney licenced to practice law in Minnesota?

A That is correct.

Q And did you find the judicial determination of the status of Mr. and Mrs. Evanson and Mr. and Mrs. Rosso?

A Yes, sir. Under District Court File No. 14838 there was an Order and Decree of Registration, and, based upon that, it was—the Attorney's Certificate was issued in the name of William Holmes and I purchased it from William Holmes.

(Plaintiff's Exhibit No. B was marked for identification.)

THE COURT: What was the date of the purchase?

THE WITNESS: Three months ago.

MR. FEINBERG: August 16th, Your Honor. It's in the Complaint.

THE COURT: August 16, 1961?

THE WITNESS: Yes.

Q (By Mr. Feinberg) Showing you plaintiff's Exhibit B, is this a true and correct copy of the Order and Decree of Registration in the Attorney's Proceeding regarding this property?

A Yes, it is.

MR. FEINBERG: Offer Plaintiff's Exhibit B.

THE COURT: Any objection? In fairness to Mr. Rosso, he is shown in here, but there of "Not Found", Mr. Feinberg. I wonder if you ought not to give them a copy?

MR. FEINBERG: I shall be happy to. Do I understand they are making a general appearance here?

THE COURT: You folks are appearing here today to contest this matter, are you, Mr. Rosso and Mrs. Rosso?

MR. ROSSO: This is my mother, Paulina Rosso.

MR. FEINBERG: Here is a copy for her and here is a copy for you.

MR. ROSSO: This is homestead property under Minnesota Statutes 510.

THE COURT: We will get to that in a minute. We are now at the place in the orderly trial of the lawsuit where the plaintiff is putting in evidence. Is the reception in evidence of that document—do you have any objection to it?

MRS. EVANSON: I object one hundred percent.

THE COURT: On what grounds?

MRS. EVANSON: On the entire paper because it is fraudulent.

THE COURT: What legal grounds?

MRS. EVANSON: Because 2324-2326 Central Avenue is my homestead property and exempt from seizure or sale. On those grounds.

THE COURT: Do you have any objection?

MR. ROSSO: Yes.

THE COURT: On what legal grounds?

MR. ROSSO: This man, he brought an Attorney's Title in. Is that what it is? Would you be so kind as to check if that Attorney's Title was properly received? The United States Government was not notified of this because the U. S. Marshall's office in St. Paul has not yet received a copy of that to serve on the U. S. Marshall as of yesterday morning, so that title of certificate is just paper.

THE COURT: I think maybe what you folks--

The document will be received, Mr. Feinberg.

(Plaintiff's Exhibit B was received in evidence.)

THE COURT: You folks are in doubt because you don't have a lawyer. The Court will instruct you a little bit as to the nature and purpose of these proceedings.

The proceedings and unlawful detainer merely determine who has the right to possession of the property. They do not determine who has the right--the title to the property. It does not determine any equitable matter such as fraud or alleged fraud, if there be such. The only thing that this Court is concerned with is: Who has the right to

possession of the property today? So I mention that because, apparently you are confusing some possible other action with this type of action.

You may proceed, Mr. Feinberg.

MR. FEINBERG: We rest, Your Honor.

THE COURT: Alright. Now, Mr. and Mrs. Evanson first. Mr. Evanson, what would you like to say? Would you like to ask some questions of the witness, or, how do you want to proceed? You don't have a lawyer, so, if you are in doubt as to the law or anything, you may feel free to ask me.

MR. EVANSON: We feel that we are lawfully occupying it because we feel that however they obtained their title was fraudulent. Now, we have homestead.

THE COURT: Do you know Mr. Holmes?

MR. EVANSON: No, I don't.

THE COURT: Were you renting from him?

MR. EVANSON: No.

THE COURT: Who were you renting from?

MR. EVANSON: We had the property.

MR. ROSSO: They got a warranty deed. They are absolute owners. If you read the answer. You have got a copy of it.

THE COURT: Mr. Rosso, when it comes to you, I will call upon you; until that time, please be quiet.

MR. FEINBERG: I object to it as incompetent, irrelevant and immaterial. It's not the best evidence. It's of no consequence or significance. There has been a judicial determination of the ownership of this property.

THE COURT: Objection sustained. Alright. You see, you are trying to attack collaterally what what the District Court has already determined was a proper transfer of title. You are trying to attack what the law calls collateral. You have your right and you have your remedies, if such a situation does obtain, but it would not be in this Court; it would be in another matter, a matter that you would almost have to hire a lawyer to look into. I might say here for the record that anything that I say here relative to fraud was purely speculative.

MRS. EVANSON: Do you mean to say that the Court can do that with that homestead property?

THE COURT: The only difference between Homestead property and non-homestead property is in the amount of taxes that you pay, and, that, if you get a judgment against you for money, they can not sell the homestead which you own to satisfy the judgment, except under certain circumstances not here material. There may be another exception that doesn't occur to me off-hand.

MRS. EVANSON: Does the Court realize that Melba and Gordon Evanson have no judgments, no creditors? We have paid our taxes.

THE COURT: This gentleman has the title to the land. He went into Court and got title to the land. I cannot go behind, nor will I go behind the District Court's Order giving them title.

MRS. EVANSON: On the evidence that we have presented to you, would you be willing to look into this matter? We come to Court. We are not lying to you.

THE COURT: The District Court—

MRS. EVANSON: You have jurisdiction.

THE COURT: This Court has no jurisdiction, Maam, to determine title to real estate. I would be exceeding my powers and I would be violating not only the law but the judicial evidence. I cannot do it.

Now, Mr. Rosso, what would you like to say?

MR. ROSSO: Just a minute.

MRS. EVANSON: In other words, this Court finds that we, as the absolute and rightful owners, must accept that sheet of paper you have in your hand as a legal document?

THE COURT: Mrs. Evanson, do you know how these documents are obtained?

MRS. EVANSON: I don't know.

THE COURT: Here is what happens. The people—

MRS. EVANSON: Legally or illegally? What way are you explaining it now? I must know.

THE COURT: I am not your lawyer. I am trying to bend over backwards to explain to you. You haven't seen fit to hire a lawyer. A person who wants to register title goes through certain legal requirements and these legal requirements are scanned and studied by Referees, appointed by the Judges of District Court, and they study the background of the title and they go into all of the papers that are involved and, then, it goes before the District Court Judge and he affirms or certifies that the finding of the Referee is correct, and, when they do that, then, they issue a certificate of title.

I could not and would not and should not go behind this certificate of title.

If you are claiming fraud on the part of this gentleman or on the part of anybody else in obtaining this, there is another Court and another place, another time to do it, but not here.

Now, Mr. Rosso.

MR. ROSSO: In other words, without looking into it, you accept this man's certificate of title even though we tell you he has not conformed to the rules that you say have to be done. He has not served the U. S. A. Government on this.

THE COURT: Do you represent the U. S. Government?

MR. ROSSO: No. They have not been given any notice in this case.

THE COURT: Well, they can intervene if they feel—

MR. ROSSO: They are supposed to be served a notice first. I checked with the U. S. Marshall's office in St. Paul. I have been checking right along. Yesterday morning was the last time I checked and they still have not received it.

THE COURT: Is there any other reason why the Writ should not be issued?

MR. ROSSO: For the simple reason this is homestead property not subject to sale or seizure according to the Minnesota Chapter 510 Legislature—Statutes.

THE COURT: I think you folks, really, what you have gotten ahold of, in looking behind the scenes, you have gotten ahold of a deed from the wrong person.

MRS. ROSSO: No, no, no. We have had the deed since 1919. We have paid taxes and we had homestead on it all those years, Your Honor.

THE COURT: What is the situation, Mr. Feinberg?

MR. FEINBERG: There is some complicated background to this as to how they lost the property.

MR. MIRVISS: There was a Specific Performance suit, Your Honor.

MR. FEINBERG: Several judicial determinations on it.

THE COURT: I notice that. I think, Mr. Rosso points that out in his answer. I think Mr. Evanson does too.

MR. ROSSO: He denied all things dated fifteen days. How come this boy comes in? He is the owner. Are you going to be a party to this?

THE COURT: Do you mean that the way that I kind of think you may mean?

MR. ROSSO: I'm just wondering what your intentions were. Are you going to look into this, which would warrant, or are you just going to say "guilty" like Judge Sletten did in a case once before? They tried to get some other property that my—

THE COURT: I would suggest that you never ask me that question again.

MR. ROSSO: Alright. I won't say no more today.

THE COURT: Now, I will go into this once more, folks. I realize this is a difficult situation.

MRS. ROSSO: WE had done nothing. We had paid our bills all our life. We pay our taxes. We don't owe anybody a cent and those people come in and take our home from us. This belonged to my son and daughter-in-law.

MRS. EVANSON: Would you please look into that answer? We beg on bended knees. All of our savings go down the drain. Robbery I call it. We don't deserve to be treated in such a manner. We are United States citizens.

THE COURT: Did they have notice of the Attorney's Proceedings?

MR. FEINBERG: Their names aren't mentioned as being tenants at sufferance, Your Honor, in the Decree--rather--in the Order and Decree. As far as the plaintiff here is concerned, the plaintiff here is dealing with a man named Holmes, who appeared to have marketable title. He appeared to have title guaranteed by the State of Minnesota and the plaintiff is a bonafide purchaser of value and went out and placed the mortgage with Twin City Federal. The plaintiff here isn't aware of these peoples' rights, if any, and they have been judicially determined. I don't know what more can be said.

THE COURT: The Writ will be issued. Give them a five-day first.

MR. FEINBERG: Yes, Your Honor.

THE COURT: Stay until the 1st of October. I have no alternative but to issue the Writ.

The exhibits may be withdrawn, Mr. White.

(Whereupon, at the hour of 2:45 o'clock p.m., the case was concluded.)

* * * * * * *

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

REPORTER'S CERTIFICATE

I, James R. White, a court reporter in and for the City of Minneapolis, County of Hennepin, State of Minnesota, do hereby certify that on the 26th day of September, 1961, I was official reporter in and for said City of Minneapolis, County and State and do also hereby certify that the foregoing transcript is a true and correct record of all it purports to contain; that it was taken by me by machine shorthand on the date indicated and transcribed to typewriting by myself.

IN WITNESS WHEREOF I have hereunto set my hand and on this 28th day of September, 1961.

/s/ James R. White
James R. White

- -

STATE OF MINNESOTA)
County of Hennepin.) ss

Municipal Court, City of Minneapolis

U. D. No. 33943

Decision and Order

The above entitled action came regularly on for trial before the undersigned, one of the Judges of said Court, without a jury, on the 26th day of September, 19 61, the plaintiff appearing in person and by Arnold I. Feinberg, Esq., as counsel, the defendants appearing in person and by _____ Esq., as counsel, and pleading not guilty.

The Court finds the defendants guilty of unlawful detention of the premises described in the complaint and concludes that the plaintiff have restitution of said premises without delay and recover costs and disbursements herein.

STAYED UNTIL OCT. 1, 1961

Let judgment be entered accordingly.

By the Court,

Bruce C. Stone
Judge.

Dated this 26th day of September, 19 61

FIVE DAY STAY

Form 309 — Writ of Restitution. 1M 10-61S

STATE OF MINNESOTA,)
COUNTY OF HENNEPIN,) ss MUNICIPAL COURT, CITY OF MINNEAPOLIS.

THE STATE OF MINNESOTA

To any Police Officer of the City of Minneapolis, or to the Sheriff or any Constable of the County Aforesaid:

WHEREAS, Northwest Holding Co., a Minnesota Corporation Plaintiff of the _____ County and State aforesaid, at the Court of Inquiry for an unlawful or forcible entry and unlawful detainer, held at Minneapolis, in the County aforesaid, on the 26th day of September A.D. 19 61, before the above named Court in and for said County and State, by the consideration of the Court recovered judgment against Gordon Evanson and Melba P. Evanson defendants of Hennepin County to have restitution of the following described premises, situate, lying and being in the City of Minneapolis, Hennepin County, Minnesota, viz:

Lot 4, block 9, Wilson's Re-arrangement of Blocks 2, 3, 6, 7, 9, 10, 11, 14, 15, 19, 20, 21, 24, 26, 29, 31, 33, 35, 37, 39, and 41 of East Side Addition to City of Minneapolis, commonly known as 2326 Central N. E.

Therefore, you are hereby commanded, that, taking with you the force of the County, if necessary, you cause the said _____ Defendants, to be immediately removed from

the aforesaid premises, and the said_____ _____Plaintiff, to have peaceable restitution of the same. You are also hereby commanded that of the goods and chattels of the said_____ Defendants aforesaid, within said County, you cause to be levied, and, the same being disposed of according to law, to be paid to the said_____Plaintiff aforesaid, the sum of Seven and 98/100 Dollars, being the costs taxed against said Defendants together with one dollar for this Writ and your fees hereon and together with this Writ, make due return within thirty days from the date hereof according to law.

Witness the Honorable TOM BERGIN,

Municipal Judge this 8th day of

November A.D. 19 61.

ARTHUR H. ANDERSON
Clerk of the Municipal Court.

By (stamped) R. W. HAGEN
Deputy.

(MUNICIPAL COURT
S E A L
City of
MINNEAPOLIS)

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

4-63 Civ. 457

Gordon Evanson, Melba P. Evanson,
Paul Dan Rosso and Paulina Rosso,
Plaintiffs,

vs.

Northwest Holding Company, a
Minnesota corporation,
Defendant.

O R D E R

This proceeding has been pending for almost two years in this Court, and notwithstanding that the Court has heretofore dismissed the action for lack of jurisdiction and ruled adversely to the plaintiffs on motions for rehearing and default judgment, and in some five or more motions seeking relief by way of so-called writs of coram nobis and/or bills of review, plaintiffs persist in filing frivolous motions. Clearly, the time for a final cessation of the filing herein of further documents by the plaintiffs is long past due.

The Clerk of this Court, therefore, is directed and ordered not to accept for filing from plaintiffs, or from anyone in their behalf, further motions, pleadings, or any other documents of whatever description in the above proceeding. All motions heretofore filed and as to which no orders have been made by this Court are denied with prejudice.

This order does not assume to prevent plaintiffs from proceeding by way of appeal to the Eighth Circuit Court of Appeals from any order of this Court if any right to appeal remains under the law.

Dated this 20th day of December, 1965.

BY THE COURT:
GUNNAR H. NORDBYE Judge

REGISTRAR OF TITLES OF HENNEPIN COUNTY, MINN.

NOTICE OF LES PENDENS ON CERTIFICATE # 346701

FEE PAID : APRIL 14, 1967
$2.00 BEN K. ALLISON, Registrar of Titles
By: F. R. Wahlstrom, Deputy Reg.
of Titles.

* * * * *

STATE OF MINNESOTA)
COUNTY OF HENNEPIN) IN UNITED STATES
SUPREME COURT

GORDON L. EVANSON AND MELBA P. EVANSON
PAUL DAN ROSSO AND PAULINA M. ROSSO,
PETITIONERS,

VS.

NORTHWEST HOLDING COMPANY,
A MINNESOTA CORPORATION,

THE FOLLOWING IS ONE OF SEVERAL ACTIONS CONSOLIDATED:
FIDELITY SECURITIES & INVESTMENT CO., A MINN. CORP., PLAINTIFF, -vs-
MELBA P. EVANSON AND PAUL DAN ROSSO, DEFENDANTS, AND THIRD-PARTY PLAINTIFFS -vs-

BEN K. ALLISON, THIRD-PARTY DEFENDANT AND ATTY. EDWARD P. DIETRICH, THIRD-PARTY DEFENDANT,
RESPONDENTS

FILE NO. 1101
OCT. TERM 1966
NOTICE OF LIS PENDENS

ON 27 FEB. 1967, PETITION FOR WRIT OF CERTIORARI WAS SERVED UPON FIDELITY SECURITIES & INV. CO., BY CERTIFIED MAIL # 539599, DELIVERY ADDRESSED TO COUNSEL OF RECORD, FRANK M. FUDALI, AT HIS POSTOFFICE ADDRESS.

(continued)
NOTICE OF LIS PENDENS

NOTICE IS HEREBY GIVEN, That the above entitled action has been commenced and the complaint therein is now on file in the office of the clerk of Court above named, that the names of the parties to said action are as above stated; that the real property affected, involved and brought in question by said action is the tract of land in the County of HENNEPIN, State of Minnesota, described as follows, to-wit:

LOT 4, BLOCK 9, WILSON'S REARRANGMENT OF BLOCKS #, 2,3,6,7,9,10,11,14,15,19,20,21,24,26,29,31,33,35, 37,39,41, of EAST SIDE ADDITION TO CITY OF MINNEAPOLIS.

THE ABOVE DESCRIBED PROPERTY IS THE HOMESTEAD PROPERTY OF MELBA P. EVANSON AND GORDON L. EVANSON AND FAMILY, AND THIS HOMESTEAD PROPERTY HAS NOT BEEN ABANDONED.

THE TENANTS IN POSSESSION OF PORTIONS OF THE HOMESTEAD PROPERTY UNDER LANDLORD MELBA P. EVANSON'S TITLE ARE :

MRS. FLORENCE MADY, OWNER
MADY'S BAR
2324 CENTRAL AVENUE N. E.

AND

MR. H.H. WEESE, OWNER
ACCURATE ADVERTISING CO.
2326 CENTRAL A VENUE N.E.

AND

MR. WILLIAM HIRSCH, PARTNER
ANCHOR LAUNDRY COMPANY, A MINNESOTA PARTNERSHIP
OCCUPYING PORTION OF REAR YARD
FOR TRUCK LOADING PURPOSES,
2324 CENTRAL AVENUE N. E.

SEE: MINN. STATUTES 504, LANDLORD AND TENANT.

ALSO SEE: KIMBLE V. WILLEY 204 F 2d 238 AFFD.
98 F. SUPP. 730

(continued)
NOTICE OF LIS PENDENS

Notice is further given that the object of said action is:

TO OBTAIN THE RIGHT OF POSSESSION OF THE HOMESTEAD PREMISES, THE RETURN OF THE EXEMPT PERSONAL POSSESSIONS, AND AFFIRMATIVE EQUITABLE RELIEF.

MINN. STATUTES 510.07 PROVIDES THE FILING OF A NOTICE WITH THE REGISTER OF DEEDS DESCRIBING THE PREMISES AND CLAIMING THE SAME AS HIS HOMESTEAD.

ON 27 APRIL 1962 THIS NOTICE WAS FILED BY THE HOMESTEAD OWNER, MELBA P. EVANSON, IN THE REGISTER OF DEEDS OFFICE AS INSTRUMENT NUMBER 3343527, FILE NUMBER 8305, BOOK 915, PAGE 404 IN VAULT.

IT SHOULD BE NOTED, THE FOLLOWING OCCURRED ON: NOVEMBER 30, 1961. THE NORTHWEST HOLDING COMPANY THEIR ATTORNEYS AGENTS AND OWNER, THE MINNEAPOLIS POLICE TOGETHER WITH OTHERS, BY FORCE, ORGANIZED VIOLENCE AND TERROR, UNDER "COLOR OF LAW", INVADED AND SEIZED THE HOMESTEAD TOGETHER WITH THE EXEMPT PERSONAL POSSESSIONS THEREIN, WHILE THE HOMESTEAD OWNER WAS IN QUIET AND PEACEABLE POSSESSION.

SEE: IRON MOUNTAIN AND HELENA R.R. V. JOHNSON
119 U. S. 608.

AN ACTION IS NOW BEFORE THE U. S. SUPREME COURT ON WRIT OF CERTIORARI. CASE NUMBER 1101, OCTOBER TERM 1966.

Dated 12 APRIL, 1967. /s/ Melba P. Evanson
7 Ortman Street S. E.
Minneapolis, Minnesota, 55414

STATE OF MINNESOTA,)
COUNTY OF HENNEPIN) ss IN UNITED STATES SUPREME COURT

GORDON L. EVANSON AND MELBA P. EVANSON
PAUL DAN ROSSO AND PAULINA M. ROSSO,
PETITIONERS,

vs.

NORTHWEST HOLDING COMPANY,
A MINNESOTA CORPORATION

THE FOLLOWING IS ONE OF SEVERAL ACTIONS CONSOLIDATED : FIDELITY SECURITIES & INVESTMENT CO., A MINN. CORP., PLAINTIFF, -vs- MELBA P. EVANSON AND PAUL DAN ROSSO, DEFENDANTS AND THIRD-PARTY PLAINTIFFS -vs- BEN K. ALLISON, THIRD-PARTY DEFENDANT AND ATTY. EDWARD P. DIETRICH, THIRD-PARTY DEFENDANT.
RESPONDENTS.

FILE NO. 1101
OCT. TERM 1966

NOTICE OF LIS PENDENS
ON TORRENS CERTIFICATE NO. 346701
ON 27 FEB. 1967, PETITION FOR WRIT OF CERTIORARI WAS SERVED UPON FIDELITY SECURITIES & INV. CO., BY CERTIFIED MAIL # 539599, DELIVERY ADDRESSED TO COUNSEL OF RECORD, FRANK M. FUDALI, AT HIS POSTOFFICE ADDRESS.

NOTICE IS HEREBY GIVEN, That the above entitled action has been commenced and the complaint therein is now on file in the office of the clerk of the Court above named; that the names of the parties to said action are as above stated; that the real property affected, involved and brought in question by said action is the tract of land in the County of HENNEPIN, State of Minnesota, described as follows, to-wit:

(continued)
NOTICE OF LIS PENDENS

LOT 4, BLOCK 9, WILSON'S REARRANGMENT OF BLOCKS 2, 3, 6, 7, 9, 10, 11, 14, 15, 19, 20, 21, 24, 26, 29, 31, 33, 35, 37, 39 and 41 of EAST SIDE ADDITION TO City of MINNEAPOLIS.

THE ABOVE DESCRIBED PROPERTY IS THE HOMESTEAD PROPERTY OF MELBA P. EVANSON AND GORDON L. EVANSON AND FAMILY, AND THIS HOMESTEAD PROPERTY HAS NOT BEEN ABANDONED.

NOTICE TO THE PUBLIC

FROM: MELBA P. EVANSON, WARRANTY DEED OWNER,
DAUGHTER OF DAN ROSSO AND PAULINA M. ROSSO.

THE FOLLOWING AFFIDAVITS ARE REGARDING :

THE "EXCLUSIVE POSSESSION", THE "NOTORIOUS POSSESSION", AND "HOMESTEAD" OF DAN ROSSO AND FAMILY, COMMONLY KNOWN AS 2324-2326 CENTRAL AVENUE NORTHEAST, MINNEAPOLIS, MINNESOTA, 55418.

DAN ROSSO AND PAULINE ROSSO, HUSBAND AND WIFE
TO
MELBA P. EVANSON
3189347
WARRANTY DEED
DATED JULY 30, 1959
FILED JULY 30, 1959, 3:20 PM
BOOK 2220 of DEEDS, PAGE 494

THE FOLLOWING AFFIDAVITS ARE RECORDED IN ACCORDANCE TO MINNESOTA STATUTES CHAPTER 386.26 TRANSCRIBING CERTAIN INSTRUMENTS, SUBD. 3; AND CHAPTER 600.23 REGISTERS AND CLERKS SUBD. 1, DEPOSIT OF PAPERS.

(continued)
NOTICE OF LIS PENDENS

CARL O. WEGNER
ALFRED R. JOHNSON
AL FORSYTHE
MELVIN O. LARSON
A. J. PIERI
MRS. HENRY STENE
H. STENE
DENNIS WEST
SAM KATIN
M. J. WILLIAM
JOHN J. FORSYTHE
JOHN A. LABENSKI
GEO. E. MURK
RAYMOND F. MALECKI
G. F. NELSON
RAYMOND K. NELSON
JOHN F. BURMEISTER

ALSO ATTACHED, A CERTIFIED COPY OF A DATED JUNE 24, 1958, ORDER BY THE HON. JUDGE PAUL S. CARROLL, THAT WAS NOT APPEALED FROM, VACATED, OR SET-ASIDE, AND IS A FINAL ORDER IN ACCORDANCE TO 18USC 1506.

DATED 8 MAY, 1967 /s/ Melba P. Evanson
7 Ortman Street S. E.
MINNEAPOLIS, MINNESOTA
ZONE 55414

MINN. STATUTES CH.

557.08 FORCIBLE EVICTION; TREBLE DAMAGES.

IF A PERSON WHO IS PUT OUT OF REAL PROPERTY IN A FORCIBLE MANNER WITHOUT LAWFUL AUTHORITY, OR WHO, BEING SO PUT OUT, IS AFTERWARDS KEPT OUT BY FORCE, SHALL RECOVER DAMAGES THEREFOR, JUDGMENT MAY BE ENTERED FOR THREE TIMES THE AMOUNT AT WHICH THE ACTUAL DAMAGES ARE ASSESSED.

557.09 FORCIBLE ENTRY; TREBLE DAMAGES.

IN CASE OF FORCIBLE ENTRY AND DETENTION, IF A PERSON, CLAIMING IN GOOD FAITH, UNDER COLOR OF TITLE, TO BE RIGHTFULLY IN POSSESSION, SO PUT OUT OR KEPT OUT, SHALL RECOVER DAMAGES THEREFOR, JUDGMENT MAY BE ENTERED IN HIS FAVOR FOR THREE TIMES THE AMOUNT AT WHICH THE ACTUAL DAMAGES ARE ASSESSED.

566.04 LIMITATION.

NO RESTITUTION SHALL BE MADE UNDER THIS CHAPTER OF ANY LANDS OR TENEMENTS OF WHICH THE PARTY COMPLAINED OF, OR HIS ANCESTORS, OR THOSE UNDER WHOM HE HOLDS THE PREMISES, HAVE BEEN IN QUIET POSSESSION FOR THREE YEARS NEXT BEFORE THE FILING OF THE COMPLAINT, AFTER THE DETERMINATION OF THE LEASEHOLD ESTATE THAT HE MAY HAVE HAD THEREIN.

In DIVIDE CREEK IRR. DIST. v. HOLLINGSWORTH (10 Cir.) 72 F (2d) 859, 863, 96 A.L.R. 937, 942,

THE COURT STATED: "* * * WHEN THE SUPREME COURT OF THE UNITED STATES, OR OTHER APPELLATE TRIBUNAL, CAN END LITIGATION BY AN EXAMINATION OF ITS OWN RECORDS, IT IS IN THE INTEREST OF JUSTICE THAT IT DO SO. NO USEFUL PURPOSE IS SUBSERVED BY REMANDING THE CASE TO ENABLE THE PARTIES FORMALLY TO DRAW UPON THE RECORD AN INDISPUTABLE AND CONCLUSIVE FACT DISCLOSED BY AN INSPECTION OF ITS OWN AUTHENTIC RECORDS. * * *

"THE SITUATION IS QUITE DIFFERENT IN THE TRIAL COURTS. THEIR JUDGMENTS ARE SUBJECT TO REVIEW, AND IN ORDER TO REVIEW THEM, A RECORD OF THE PROCEEDINGS IN THAT CASE MUST BE MADE FOR AN APPELLATE COURT WHICH CANNOT TAKE NOTICE OF THE RECORDS OF EVERY DISTRICT IN ITS JURISDICTION. MOREOVER, QUESTIONS OF RES JUDICATA ARE OFTEN CLOSE AND DISPUTABLE, AND ADVERSARIES OUGHT TO BE NOTIFIED OF THE PLEA AND AFFORDED AN OPPORTUNITY TO MEET IT. IN THE TRIAL COURTS, THEREFORE, A CLAIM OF RES JUDICATA MUST BE PLEADED, AND IF TRAVERSED, PROOF THEREOF MUST BE MADE. The records are sufficient evidence of their genuineness (Wigmore on Evidence, § 2158), but the material parts of the record of the former proceeding must be offered in evidence, in order that a record may be made upon which a review may be had."

LOWRY v. ERWIN, 39 Am. Dec. 556 (La. 1843)

IN FORCED ALIENATIONS, REASONABLE COMPLIANCE WITH THE FORMS OF LAW IS NECESSARY, UNDER PENALTY OF NULLITY. WHEN RESORT IS HAD TO THE SUMMARY AND MORE SEVERE REMEDIES ALLOWED, A STRICTER COMPLIANCE WITH EVERY LEGAL FORMALITY IS REQUISITE.

PROCEEDINGS UNDER EXECUTORY PROCESS OF SEIZURE AND SALES ARE TO BE SCRUTINIZED CLOSELY; AND IF THE LAW HAS NOT BEEN COMPLIED WITH, THE SALE IS VOID.

VALID JUDGMENT IS NECESSARY TO SUPPORT SALE UNDER AN EXECUTION OR ORDER OF SALE, AND WITHOUT IT THE TITLE IS NOT DIVESTED.

PRESUMPTION THAT CAUSE IS WITHIN JURISDICTION OF COURT, APPLIED ONLY TO COURTS OF GENERAL JURISDICTION, NOT TO THOSE WHOSE JURISDICTION IS LIMITED.

PURCHASER UNDER VOID ORDER OF SALE ACQUIRES NO RIGHTS, THOUGH HE ACTED IN GOOD FAITH.

PERSON WHO IS NOT A BONA FIDE PURCHASER IS LIABLE FOR THE FRUITS AND REVENUES OF THE PROPERTY FROM THE DATE OF HIS POSSESSION.

PERSON IS NOT A BONA FIDE HOLDER WHO PURCHASES UNDER A VOID JUDGMENT; SUCH A JUDGMENT HAS NO EFFECT AND CAN NOT FORM A BASIS OF TITLE.

C. D. MASTIN V. A. W. MAY
127 MINN. 93 (1914)

FORCIBLE ENTRY AND UNLAWFUL DETAINER.

1. PROCEEDINGS UNDER THE FORCIBLE ENTRY AND DETAINER STATUTE, TO RECOVER THE POSSESSION OF LAND ALLEGED TO BE UNLAWFULLY AND FORCIBLY DETAINED, CANNOT BE MAINTAINED AGAINST A PERSON WHO PEACEABLY AND UNDER CLAIM OF RIGHT ENTERED INTO POSSESSION OF THE PROPERTY, AND DOES NOT FORCIBLY DETAIN THE SAME. Davis v. Woodward, 19 Minn. 137 (174), followed and applied.

SAME — EJECTMENT.

2. THE UNLAWFUL DETENTION, UNACCOMPANIED WITH FORCE, WHERE THE ORIGINAL POSSESSION WAS TAKEN PEACEABLY AND UNDER CLAIM OF RIGHT, IS NOT SUFFICIENT TO AUTHORIZE PROCEEDINGS UNDER SECTION 7657, G.S. 1913. EJECTMENT IS THE REMEDY IN SUCH CASES.

AT 95.

IF THE ENTRY INTO POSSESSION BE UNDER CLAIM OF RIGHT OR PEACEABLY, THEN THE PROCEEDING CANNOT BE MAINTAINED, UNLESS THE POSSESSION THUS TAKEN BE "UNLAWFULLY AND FORCIBLY" DETAINED. THE UNLAWFUL DETENTION IS NOT, STANDING ALONE, SUFFICIENT, WHERE THE PROCEEDING IS FOUNDED UPON SECTION 7657, G.S. 1913. Davis v. Woodward, 19 MINN. 137 (174). THE STATUTE, WITH SOME MODIFICATIONS, IS BUT DECLARATORY OF THE COMMON LAW UPON THE SUBJECT, AND WAS DESIGNED TO PROVIDE A SPEEDY REMEDY TO RECOVER THE POSSESSION OF LAND UNLAWFULLY TAKEN OR FORCIBLY AND UNLAWFULLY DETAINED FROM THE PERSON ENTITLED THERETO. IT WAS NOT INTENDED AS A SUBSTITUTE FOR EJECTMENT (O'Neil v. Jones, 72 Minn. 446, 75 N. W. 701), AND IS ONLY APPLICABLE TO THE CASES SPECIALLY PROVIDED FOR BY THE STATUTE. IN THE CASE AT BAR THE RECORD DOES NOT PRESENT FACTS SHOWING EITHER AN UNLAWFUL OR FORCIBLE ENTRY OF THE LAND IN QUESTION, THE FINDINGS NEGATIVE EITHER THEORY, AND PLAINTIFF CANNOT RECOVER UPON THAT GROUND.

BEIGLER v. CHAMBERLIN (1920)
145 MINN. 104

ATTACHMENT OF HOMESTEAD BY CREDITORS WITHOUT RIGHT TO LIEN.

AT 106 :

...REAL ESTATE WHICH CANNOT BE SEIZED UPON EXECUTION CANNOT BE ATTACHED SO AS TO GIVE A LIEN THEREON. Fletcher v. Tuttle, 97 Me. 491, 54 Atl. 1110.

NO CREDITOR CAN REDEEM FROM AN EXECUTION SALE, UNLESS HE HAS A LIEN ON THE PROPERTY SOUGHT TO BE REDEEMED. THE ONLY LIEN ASSERTED BY PLAINTIFF WAS BY VIRTUE OF THE LEVY MADE UNDER HER ATTACHMENT. IF THE LAND WAS THEN THE HOMESTEAD OF THE DEFENDANT IN THE ACTION, IT WAS EXEMPT FROM SEIZURE AND NO LIEN WAS ACQUIRED BY THE LEVY UNDER THE WRIT. THIS IS SETTLED LAW. IT WAS NOT NECESSARY TO PROTEST THE LEVY. THE DEFENDANT COULD IGNORE IT AND IGNORE A SALE UPON AN EXECUTION ON ANY JUDGMENT THAT COULD BE ENTERED ON THE FINDINGS THAT WERE MADE IN THE CASE, AND AFTERWARDS ASSERT HIS HOMESTEAD RIGHT AS HE HAS DONE IN THIS ANSWER. "THE STATUTE GIVES THE EXEMPTION ABSOLUTELY, AND WITHOUT MAKING THE RIGHT TO IT DEPENDENT UPON ANY AFFIRMATIVE ACTION UPON THE PART OF THE PERSON CLAIMING IT TOWARDS AN OFFICER LEVYING OR ABOUT TO LEVY UPON IT. Ferguson v. Kumler, 25 Minn. 183.

THE SETTLED LAW IS CLEAR, in Beigler v. Chamberlin, supra, THE DEFENDANT COULD IGNORE, "...the findings that were made in the case, and afterwards ASSERT his HOMESTEAD RIGHT as he has done in this ANSWER".

In accordance to the settled law, the findings that were made in HOLMES' Application to Register Land, DID NOT STOP PETITIONERS from asserting Homestead Rights as was done in the ANSWER made in the Mpls. Criminal Court, (P. 204A, Pet. for Writ of Certiorari); NOR, could this finding in land registration, cast a cloud upon PETITIONERS'

BISE v. UNITED STATES, 144 F. 374 (Ind. 1906)

UNDER REV. ST. § 5357 (U.S. Comp. St. 1901, p. 3639), PROVIDING FOR THE PUNISHMENT OF ONE RECEIVING STOLEN GOODS KNOWING THE SAME TO HAVE BEEN STOLEN, IT IS NOT ESSENTIAL TO ALLEGE THAT THE PROPERTY WAS RECEIVED WITHOUT THE CONSENT OF THE OWNER OR WITH INTENT TO DEPRIVE HIM OF ITS VALUE AND BENEFIT; IT BEING SUFFICIENT TO ALLEGE THAT THE ACT WAS UNLAWFUL AND FELONIOUS.

STATE v. BERWEYER, MAN. UNREP. CAS. 180 (1880)

UNDER AN INDICTMENT FOR ROBBERY, THE VALUE OF THE PROPERTY TAKEN IS IMMATERIAL, PROVIDED IT BE OF SOME VALUE. A WATCH WORTH A PENNY FORCIBLY EXTORTED, MAKES THE ROBBERY AS WELL AS IF WORTH A POUND; THE GIST OF THE OFFENSE BEING THE FORCE AND TERROR. IF SOMETHING BE TAKEN AND IT BE OF SOME VALUE, IT IS SUFFICIENT.

STATE v. GOLDMAN, 47 A. 641, 65 N.J. Law, 394 N.J. Sup. 1900)

IN A PROSECUTION FOR RECEIVING STOLEN GOODS THE FACT THAT THEY WERE PURCHASED VERY MUCH BELOW THEIR VALUE MAY BE CONSIDERED ON THE QUESTION OF GUILTY KNOWLEDGE.

PEOPLE v. FLECHTER, 60 N.Y.S. 777, 44 App. Div. 199, 14 N.Y. Cr. R. 328 (N.Y. Sup 1899)

ONE OFFERING TO SELL PROPERTY KNOWING IT TO HAVE BEEN STOLEN HAS THE GUILTY INTENT OF DEPRIVING THE TRUE OWNER THEREOF, AND THE CRIMINALITY OF THE POSSESSION THEREBY BECOMES INDISPUTABLE.

Matson v. Ripley, 98 Ill. App. 479, judgment aff'd (1902) 63 N.E. 677, 196 Ill269.

WHERE A PERSON WITHOUT TITLE TO PROPERTY MAKES A BILL OF SALE OF IT TO ANOTHER, HE CONVEYS NO TITLE.

Commonwealth v. Humphries, 7 Mass. 242; (1851)

ROBBERY, BY THE COMMON LAW, IS LARCENY FROM THE PERSON, ACCOMPANIED BY VIOLENCE OR BY PUTTING IN FEAR: AND AN INDICTMENT THEREFOR MUST ALLEGE THAT THE TAKING WAS FROM THE PERSON, AND THAT IT WAS BY VIOLENCE, OR BY PUTTING IN FEAR, IN ADDITION TO THE AVERMENTS THAT ARE NECESSARY IN INDICTMENTS FOR OTHER LARCENIES.

State v. Nicolson, 32 S.E. 813, 124 N.C. 820.

TO MAKE THE TAKING OF PROPERTY, BY PUTTING THE OWNER IN FEAR, ROBBERY, IT IS NOT NECESSARY THAT THE FEAR AMOUNTED TO GREAT TERROR, BUT IT IS SUFFICIENT IF IT MADE HIM APPREHENSIVE OF DANGER.

Tones v. State, 88 S.W. 217, 48 Tex. Cr. R. 363, 122 Am. St. Rep. 759.

IN A PROSECUTION FOR ROBBERY, IT IS NOT NECESSARY THAT ACTUAL FEAR OF LIFE AND BODILY INJURY ON THE VICTIM'S PART SHOULD BE STRICTLY AND PRECISELY PROVED, AS THE LAW PRESUMES FEAR WHERE THERE APPEARS TO BE JUST GROUND FOR IT.

People v. Stevens, 75 P. 62, 141 Cal. 488

UNDER PEN. CODE, S 211, DEFINING ROBBERY AS THE FELONIOUS TAKING OF PERSONAL PROPERTY FROM THE PERSON AND IMMEDIATE PRESENCE OF ANOTHER BY FORCE OR FEAR, AND AGAINST HIS WILL, THE VALUE OF THE PROPERTY TAKEN IS IMMATERIAL, AND AN ALLEGATION AS TO VALUE IN THE INFORMATION MAY BE DISREGARDED.

Grand Rapids & Indiana R. Co. v. Sparrow et al.
1 LRA 480 (1888 Mich.)

2. The remedy at law which, under U. S. Rev. Stat. § 723, will defeat the equitable jurisdiction of federal courts must be a remedy at common law, and not merely a legal remedy given by a state statute.

The suit was commenced in the Circuit Court of the State of Michigan for Missaukee County, and thence removed into the United States Circuit Court by the defendants, on the ground that it was a case arising under the laws of the United States.

The equity jurisdiction conferred on the federal courts is the same as that possessed by the High Court of Chancery in England; it is subject to neither limitation nor restraint by state legislation, and is uniform throughout the different States. Payne v. Hook 74 U.S. 7 Wall. 430 (19 L. ed. 262).

But when the Act defining the jurisdiction of the federal courts in equity was passed, and suits were forbidden when a plain, adequate and complete remedy at law existed (U.S. Rev. Stat. § 723), it was the remedy furnished by the common law which was thereby intended. Supplementary statutes giving new legal remedies do not disturb the original equitable jurisdiction, nor supplant it.

CURTIS AND OTHERS AGAINST LEAVITT
15 N.Y. (1 SMITH) 96 (1857).

"...VOID IN PART, VOID IN TOTO" HAS OFTEN FOUND ITS WAY INTO BOOKS AND JUDICIAL OPINIONS AS DESCRIPTIVE OF THE EFFECT WHICH A STATUTE MAY HAVE UPON DEEDS AND OTHER INSTRUMENTS WHICH HAVE IN THEM SOME FORBIDDEN VICE. THERE IS, HOWEVER, NO SUCH GENERAL PRINCIPLE OF LAW AS THE MAXIM WOULD SEEM TO INDICATE. ON THE CONTRARY, THE GENERAL RULE IS, THAT IF THE GOOD BE MIXED WITH THE BAD IT SHALL NEVERTHELESS STAND, PROVIDED A SEPARATION CAN BE MADE.

THE EXCEPTIONS ARE: FIRST. WHERE A STATUTE, BY ITS EXPRESS TERMS, DECLARES THE WHOLE DEED OR CONTRACT VOID ON ACCOUNT OF SOME PROVISION WHICH IS UNLAWFUL: AND, SECOND. WHERE THERE IS SOME ALL-PERVADING VICE, SUCH AS FRAUD, FOR EXAMPLE, WHICH IS CONDEMNED BY THE COMMON LAW, AND AVOIDS ALL PARTS OF THE TRANSACTION BECAUSE ALL ARE ALIKE INFECTED.

CONLEY v. BUCK. 29 S.E. 710. 102 Ga. 752

A CREDITOR BROUGHT AN EQUITABLE PROCEEDING TO HAVE A CONVEYANCE BY THE DEBTOR SET ASIDE AS FRAUDULENT. JUDGMENT WAS RENDERED DECLARING THE CONVEYANCE FRAUDULENT AS TO THE CREDITOR.

HELD, THAT THE CREDITOR WAS NOT ENTITLED TO HAVE EXECUTION FOR HIS DEBT ISSUED ON THIS JUDGMENT.

PETSCH v. BIGGS 31 MINN. 392

THIS CHAPTER PROVIDES THAT ALL MATTERS IN EXCUSE, JUSTIFICATION AND AVOIDANCE OF THE ALLEGATIONS IN THE COMPLAINT SHALL BE SET UP IN THE ANSWER. THIS MUST BE UNDERSTOOD TO REFER TO MATTERS WHICH PER SE CONSTITUTE AN EXCUSE, JUSTIFICATION OR AVOIDANCE, WHICH OF THEMSELVES, AND WITHOUT AFFIRMATIVE AID FROM A COURT, ENTITLE THE DEFENDANT TO RETAIN THE PRESENT POSSESSION, AND DOES NOT INCLUDE THOSE MATTERS UPON WHICH A PROPER COURT MIGHT AFFORD THE DEFENDANT AFFIRMATIVE RELIEF, AND WHICH GO TO HIS RIGHT TO POSSESSION, ONLY AFTER SUCH RELIEF HAS BEEN GRANTED.

STATE v. DRUXINMAN, 75 P. 814, 34 Wash. 257 (1904)

IN A PROSECUTION FOR BUYING AND RECEIVING STOLEN GOODS KNOWING THE SAME TO HAVE BEEN STOLEN THE COURT INSTRUCTED THAT THE ESSENTIAL INGREDIENT WAS KNOWLEDGE THAT THE GOODS WERE STOLEN, AND THAT THIS MUST EXIST AT THE TIME OF THEIR RECEIPT OR PURCHASE, BUT THAT IT NEED NOT BE DIRECT KNOWLEDGE, AND THAT IT WAS SUFFICIENT THAT CIRCUMSTANCES ACCOMPANYING THE TRANSACTION WERE SUCH AS TO MAKE DEFENDANT BELIEVE THE GOODS WERE STOLEN. HELD A CORRECT STATEMENT OF THE LAW GOVERNING SUCH CASES.

THE STATE v. SPRINGDALE, 215 NE 2d 592 (1966)

2. Corporations Key 320(4)

WHERE OFFICERS OR DIRECTORS OF CORPORATION WILL NOT DISCHARGE THEIR DUTY, CORPORATION IS ORDINARILY PROPER PARTY TO REDRESS WRONG, BUT IF DIRECTORS ARE PARTIES TO WRONG OR WILL NOT BRING ACTION, OR BOTH, SHAREHOLDERS MAY SUE.

3. MUNICIPAL CORPORATIONS Key 997

RESPONSIBILITY FOR ENFORCEMENT OF PUBLIC RIGHT TO PERFORMANCE OF PUBLIC DUTY BY OFFICER OF MUNICIPAL CORPORATION IS IMPOSED IN FIRST INSTANCE UPON SOLICITOR. R.C. § 733.58.

4. MUNICIPAL CORPORATIONS Key 999

ONLY UPON FAILURE OF SOLICITOR TO ACT, PURSUANT TO REQUEST, MAY PRIVATE PARTY INSTITUTE SUIT IN HIS OWN NAME, ON BEHALF OF MUNICIPAL CORPORATION. R.C. § 733.59.

5. MUNICIPAL CORPORATIONS KEY 999

STATUTE PROVIDING THAT PRIVATE PARTY MAY SUE TO PROTECT PUBLIC ONLY AFTER UNSUCCESSFUL REQUEST UPON SOLICITOR TO ACT WAS INTENDED TO PREVENT MUNICIPAL CORPORATION FROM BECOMING PLAINTIFF IN COURT WITHOUT ITS CONSENT. R.C. § 733.59.

POPPEN v. WADLEIGH 1952, 235 MINN. 400.

PROVISION OF THIS SECTION FOR TREBLE DAMAGES IS APPLICABLE ONLY IF A GOOD CAUSE OF ACTION EXISTS FOR DAMAGES CAUSED BY A FORCIBLE EVICTION.

UNDER THIS SECTION JURY IS TO ASSESS SINGLE DAMAGES AND TRIAL COURT MUST TREBLE SUCH DAMAGES IN A CASE WHICH IT DEEMS PROPER.

"FORCIBLE MANNER" MEANS UNUSUAL FORCE WHICH TENDS TO BRING ABOUT A BREACH OF THE PEACE, SUCH AS ENTRY WITH A STRONG HAND OR A MULTITUDE OF PEOPLE, IN A RIOTOUS MANNER, WITH PERSONAL VIOLENCE OR WITH THREAT AND MENACE TO LIFE OR LIMB, OR UNDER CIRCUMSTANCES WHICH WOULD NATURALLY INSPIRE FEAR AND APPREHENSION OF DANGER OF PERSONAL INJURY.

XXI. CERTIFICATE OF PETITIONERS.

PAUL DAN ROSSO AND MELBA P. EVANSON, PETITIONERS IN THEIR OWN BEHALF HEREIN, REPRESENTS THAT THIS PETITION FOR REHEARING IS PRESENTED IN GOOD FAITH AND NOT FOR DELAY, AND THAT IT STATES SUBSTANTIAL GROUNDS NOT PREVIOUSLY PRESENTED IN THE PETITION FOR WRIT OF CERTIORARI, AND IS THE LAST CLEAR CHANCE TO SET ASIDE VOID JUDGMENTS AND PURGE THE RECORDS, AND OBTAIN AFFIRMATIVE EQUITABLE RELIEF.

Respectfully submitted,

Paul Dan Rosso
PAUL DAN ROSSO

Melba P. Evanson
MELBA P. EVANSON
7 ORTMAN STREET SOUTHEAST
MINNEAPOLIS, MINNESOTA

Paul Dan Rosso
7 Ortman St. S.E.
Mpls., Minn.,55414